It does apply to line 6 as well. In effect, it makes this a sense-of-Congress resolution rather than binding. We would hope to pass it over here in this forum and then have the Senate adopt it in its original form where it will become law.

MR. BOUCHER: Mr. Chairman, if the gentleman will continue to yield, I thank the gentleman for his explanation. . . .

I ask the gentleman this additional question: Does the gentleman believe that he is adding any requirements that do not already exist in present law through the general text of his amendment? Will this amendment, if adopted, change the required conduct of universities in terms of the access and information they provide?

MR. SOLOMON: Mr. Chairman, let me say to the gentleman, it is not my intention, by rendering this new modification, to create new law. It is applicable law. That is my intent. . . .

THE CHAIRMAN: The gentleman from Virginia [Mr. Boucher] has reserved a point of order. Does the gentleman wish to press the point of order?

MR. BOUCHER: Mr. Chairman, I withdraw the reservation of the point of order.

§ 4. Timeliness

It is essential that a point of order be raised at the proper time if it is to be entertained by the Chair. Generally, a point of order comes too late after debate on the matter has commenced; but the precedents are sometimes more explicit in defining when a point of order is timely. For example, a point of order against a privileged resolution is properly raised when it is called up, before debate is had on the resolution.[15] Similarly, a point of order against "consideration" is timely when the measure is called up.[16] A point of order against a report involving the privileges of the House is properly raised after the report is read,[17] whereas points of order against conference reports are made after the reading of the report and before the reading of the statement of the managers in explanation of the report.[18]

Challenging Privileged Status of a Resolution

§ 4.1 A point of order questioning the privilege of a resolution reported by the Committee on Rules has been entertained when the resolution was called up before the reading of the resolution by the Clerk.

On Aug. 19, 1964,[19] before the Clerk read the text of a privileged

15. See § 4.1, infra.

16. See § 4.2, infra.

17. See § 4.5, infra.

18. See § 4.4 and Ch. 33, infra.

19. 110 CONG. REC. 20212, 20213, 88th Cong. 2d Sess. Under consideration

resolution, it was determined to be timely for a Member to raise a point of order against it.

MR. [HOWARD W.] SMITH of Virginia: Mr. Speaker, I call up House Resolution 845 and ask for its immediate consideration.

MR. [JAMES G.] O'HARA of Michigan: Mr. Speaker, I make a point of order.

THE SPEAKER:[20] The gentleman will state it.

MR. O'HARA of Michigan: Mr. Speaker, I make a point of order against the consideration of House Resolution 845 on the grounds that the Committee on Rules is without jurisdiction to bring such resolution to the floor of the House under the provisions of rule 16 of the Rules of the House of Representatives, and I ask permission to be heard on the point of order.

THE SPEAKER: The Chair will hear the gentleman.

Following argument, the Speaker overruled the point of order.

Points of Order Against Consideration of Measure

§ 4.2 Under the Congressional Budget Act of 1974, one of the enforcement measures permitted a point of order against the consideration of a bill providing new spending authority not subject to the appropriations process.

The House of Representatives and the Senate have sometimes reached different interpretations of provisions of the Congressional Budget Act of 1974. Such was the case in 1975 when the House, acting first on the legislation, permitted consideration of the International Development Act of 1975, H.R. 9005, the Speaker overruling a point of order that the bill could not be considered because of a provision defining certain loan receipts under the bill as being "authorized to be made available." The Speaker found evidence in the bill that the receipts were available only through the appropriations process.

The House proceedings of Sept. 10, 1975,[1] were as indicated below:

INTERNATIONAL DEVELOPMENT AND FOOD ASSISTANCE ACT OF 1975

MR. [THOMAS E.] MORGAN [of Pennsylvania]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 9005) to authorize assistance for disaster relief and rehabilitation, to provide for overseas distribution and production of agricultural commodities, to amend the Foreign Assistance Act of 1961, and for other purposes.

POINT OF ORDER

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, I make a point of

was H. Res. 845, providing for the consideration of H.R. 11926, which was to limit the jurisdiction of federal courts in reapportionment cases.

20. John W. McCormack (Mass.).

1. 121 CONG. REC. 28270, 28271, 94th Cong. 1st Sess.

order against the present consideration of the bill H.R. 9005 on the grounds that on page 15 of this bill, in section 302(e), lines 6 to 17, there is contained a provision which in essence changes the law governing repayments on previous foreign assistance loans making these sums available for certain purposes without reappropriation by Congress. At the present time the proceeds from repayments of these loans are returned to the Treasury for later reappropriation by the Congress.

Apparently this provision allows at least $200 million in loan reflows, as the report refers to them, to be respent without either authorization or further appropriation by the Congress each year.

It would be my contention that this provision violates Public Law 93–344, section 401(a), the Congressional Budget Act of 1974, which in effect prohibits the consideration by the House of any bill or resolution which provides any new spending authority. In effect this is back-door spending without authorization and appropriation each year by the Congress.

THE SPEAKER:[2] Does the gentleman from Pennsylvania desire to be heard on the point of order?

MR. MORGAN: I do, Mr. Speaker.

Mr. Speaker, I rise in opposition to the point of order.

Mr. Speaker, the proposed section 103 of the Foreign Assistance Act of 1961 contained in section 301(a) of House Resolution 905 as reported, which authorizes the repayment on prior year foreign aid loans to be made available for specific purposes, does not in effect appropriate funds and, therefore, is not subject to a point of order under clause 5 of rule XXI. The funds referred to in section 103 will not be available for reuse unless they are appropriated. . . . The clear language of the bill, Mr. Speaker, proposed in section 103 specifically provides that amounts repaid are authorized to be available for use and authorized for appropriation. It does not provide that they be available for use as an appropriation.

THE SPEAKER: The Chair would like to address a question to the gentleman from Maryland.

Is the gentleman raising a point of order under the Budget Act for the purpose of preventing the consideration of the legislation, or is he attempting to make a point of order that this is an appropriation on a legislative bill?

MR. BAUMAN: Mr. Speaker, I am making the point of order for the express purpose of preventing the consideration of the bill, inasmuch as the public law to which I have referred says that it shall not be in order for either House to consider a bill which contains such a provision.

I would, therefore, in response to the statement of the chairman of the committee, refer to the committee report on page 46 which says:

> The third subsection added to section 103 authorizes repayments on prior year aid loans to be made available for specified purposes.

This would remove it from the appropriation process.

THE SPEAKER: The Chair is ready to rule. The gentleman from Maryland is making the point of order that the por-

2. Carl Albert (Okla.).

tion of the bill under section 302(e) constitutes new spending authority and violates section 401(a) of the Budget Act, Public Law 93–344.

The Chair has reviewed the language shown in the bill and in the report which shows that it is subject to the appropriation process because the whole intent and thrust is predicated on the words "are authorized to be made available." In other words, the reflow funds are to be appropriated by the Committee on Appropriations and by subsequent legislative actions and not as a result of the passage of this bill.

The Chair, therefore, overrules the point of order.

In the Senate, a point of order against consideration was sustained, but then the Senate permitted the point of order to be withdrawn and the bill modified to pass muster under the Budget Act. The Senate proceedings of Nov. 3, 1975,[3] which carry a description of how the House resolved the parliamentary situation, are carried below:

MR. [DANIEL K.] INOUYE [of Hawaii]: Mr. President, I raise a point of order with reference to section 492(d), page 5, line 17) and section 302(e), (page 23, line 6), authorizing funds "to be made available" which violates section 401(a) of the Budget Act, Public Law 93–344, which states:

> It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2) (A) or (B) (or any amendment which provides such new spending authority), unless that bill, resolution, or amendment also provides that such new spending authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

THE PRESIDING OFFICER:[4] The Chair rules the point of order is well taken under section 401(a) of Public Law 93–344. Therefore, the bill cannot be considered.

What is the pleasure of the Senate?

MR. [HUBERT H.] HUMPHREY [of Minnesota]: Mr. President——

THE PRESIDING OFFICER: The Senator from Minnesota.

MR. HUMPHREY: Mr. President, I understand the concern that the Senator from Hawaii has expressed. Might I say most respectfully that in the other body, and I say this to the Parliamentarian, as the Parliamentarian knows, the ruling of the Parliamentarian was that the language was in order in the bill.

This is the language from the other body, but we have our own rules; I understand that.

I suggest to the Senator from Hawaii that the report indicates what has been our practice, that the use of funds for these purposes, whatever the purposes as outlined were, would of course be contingent upon the appropriations action. So it might be, if the Senator will withhold his point of order, that we might be able to reconcile our differences here, because there is no de-

3. 121 CONG. REC. 34732–34, 94th Cong. 1st Sess.

4. Patrick J. Leahy (Vt.).

sire to escape the appropriations process.

For example: On line 6, the language "after July 1, 1975, are authorized to be appropriated for each of the fiscal years 1976 and 1977" instead of "authorized to be made available."

THE PRESIDING OFFICER: The Chair would advise the Senator from Minnesota that to vitiate the point of order and the rulings would require unanimous consent. . . .

MR. HUMPHREY: Large sums of money, and that is why in this language we are authorizing their use only on the basis of the appropriations process. We authorize them for specific purposes, such as for the International Fund for Agricultural Development the sum of $200 million. But it is not to bypass the Appropriations Committee. And I think it should be noted that when this point was raised in the other body, the chairman of the House International Relations Committee rose in opposition to the point of order.

He noted some of the same points that are being made here. . . .

Senator Humphrey then quoted from the debate and the ruling by Speaker Albert.

THE PRESIDING OFFICER: The Chair advises, in that regard, based on the point of order originally made and the ruling by the Chair, that the bill is not before the Senate to be so amended, unless by unanimous consent, and the point of order would be withdrawn, even though that would allow the point of order to be raised again, but, if by unanimous consent the point of order were withdrawn, the Senate could move to consideration of such an amendment. . . .

MR. INOUYE: Mr. President, I ask unanimous consent to withdraw my point of order.

THE PRESIDING OFFICER: Does the Senator ask unanimous consent that his point of order be withdrawn?

MR. INOUYE: I do.

THE PRESIDING OFFICER: Without objection, it is so ordered.

MR. HUMPHREY: Mr. President, in light of the discussion which we have had, both here and in the colloquy, as well as our private discussions, I now move, on page 23, on line 6, after the words, "to be", to strike the words "made available", and insert in lieu thereof the word "appropriated". The line will then read: "and after July 1, 1975, are authorized to be appropriated" for each of the fiscal years, and so on.

THE PRESIDING OFFICER: The question is on agreeing to the amendment.

The amendment was agreed to.

Budget Act Point of Order Against Consideration

§ 4.3 While the Budget Act prohibits consideration of a bill, amendment or conference report which would cause the total level of budget outlays for the current year to be exceeded, the point of order must be made when the bill, amendment, or conference report is called up and comes too late after debate.

On Dec. 15, 1982,[5] the Chairman of the Committee on Appro-

5. 128 CONG. REC. 30912, 30923, 97th Cong. 2d Sess.

priations called up a conference report on the agricultural appropriation bill, fiscal 1983. The conference report was considered as read and then Mr. Jamie L. Whitten, of Mississippi, was recognized to debate the report. The following proceedings are pertinent.

AGRICULTURE, RURAL DEVELOPMENT AND RELATED AGENCIES APPROPRIATION, 1983

MR. WHITTEN: Mr. Speaker, I call up the conference report on the bill (H.R. 7072) making appropriations for the agriculture, rural development, and related agencies programs for the fiscal year ending September 30, 1983, and for other purposes.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:[6] Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of December 10, 1982.)

THE SPEAKER PRO TEMPORE: The gentleman from Mississippi (Mr. Whitten) will be recognized for 30 minutes, and the gentlewoman from Nebraska (Mrs. Smith) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Mississippi (Mr. Whitten). . . .

PARLIAMENTARY INQUIRY

MR. [WILLIAM E.] DANNEMEYER [of California]: Mr. Speaker, before I consume that 1 minute, may I have a parliamentary inquiry?

THE SPEAKER PRO TEMPORE: The parliamentary inquiry would be made as part of your 1 minute. All time is controlled.

MR. DANNEMEYER: Then this is my request in the nature of a parliamentary inquiry.

If the funding level of this conference report is $31.7 billion-plus, and the budget resolution passed by the House earlier this year listed as a maximum amount for this area of spending something a little below $23 billion, my parliamentary inquiry is: If we have passed the budget resolution providing a level of spending for this category or function of the Federal budget, how do we have the ability now to consider a conference report that proposes to spend an amount substantially in excess of that figure? Where do we get that right?

MR. WHITTEN: Mr. Speaker, will the gentleman yield to me?

THE SPEAKER PRO TEMPORE:[7] No point of order was made against the conference report when it was brought up. If one had been raised, the Chair would have ruled at that time. A timely point of order was not made and, therefore, there is no ruling.

MR. DANNEMEYER: Does the Speaker mean that if a Member had raised this in the way of a point of order when it was first brought up——

THE SPEAKER PRO TEMPORE: If there had been a point of order raised on a timely basis, the Chair would have ruled on the point of order.

MR. DANNEMEYER: Ruled which way?

THE SPEAKER PRO TEMPORE: The Chair cannot engage in speculation.

MR. WHITTEN: Mr. Speaker, will the gentleman yield to me?

6. Thomas S. Foley (Wash.).

7. Donald J. Pease (Ohio).

THE SPEAKER PRO TEMPORE: The time of the gentleman from California (Mr. Dannemeyer) has expired.

MR. WHITTEN: Mr. Speaker, I yield myself 1 minute.

Point of Order Against Privileged Resolution Does Not Reflect Committee Action

§ 4.4 A point of order that the text of a privileged resolution does not reflect the action of the Committee on House Administration in ordering it reported comes too late after there has been debate on the resolution.

On Aug. 5, 1970,[8] a privileged report was filed from the Committee on House Administration and immediately called up for consideration. Following the reading of the resolution and several minutes of discussion as to the merits of raising the salaries of two House employees, a parliamentary inquiry was made as to the timeliness of a point of order.

THE SPEAKER:[9] The gentleman will state the parliamentary inquiry.

MR. [WILLIAM L.] DICKINSON [of Alabama]: Mr. Speaker, according to the rules of the House would a point of order lie to this bill inasmuch as it is not as was reported out of the committee yesterday, and is not identical? Would a point of order lie at this point?

THE SPEAKER: The resolution is already under consideration and there has been debate.

Any point of order against its consideration would come too late at this time.

Point of Order Against Report Relating to Privilege of House

§ 4.5 A point of order against a report involving the privileges of the House is properly raised after the report is read.

On Oct. 18, 1966,[10] Speaker John W. McCormack, of Massachusetts, responded to an inquiry as to when was the proper time to raise a point of order against a privileged report filed by the Committee on Un-American Activities.

MR. [EDWIN E.] WILLIS [of Louisiana]: Mr. Speaker, I rise on a question of the privilege of the House, and by direction of the Committee on Un-American Activities I submit a privileged report—House Report No. 2302.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, a parliamentary inquiry.

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8. 116 CONG. REC. 27450, 91st Cong. 2d Sess. Under consideration was H. Res. 1117, which provided additional compensation for two positions created by H. Res. 543 [89th Cong.].

9. John W. McCormack (Mass.).

10. 112 CONG. REC. 27439, 89th Cong. 2d Sess. Under consideration was H. Rept. No. 89–2302, which related to H. Res. 1060, involving the refusal of a witness to testify before the Committee on Un–American Activities.

THE SPEAKER: The gentleman will state it.

MR. YATES: At what point is it in order for me to present a point of order to the resolution?

THE SPEAKER: After the report is read.

The Clerk read as follows:

PROCEEDINGS AGAINST MILTON MITCHELL COHEN

The Committee on Un-American Activities, as created and authorized by the House of Representatives, through the enactment of Public Law 601 of the 79th Congress, section 121, subsection (q)(2), under House Resolution 8 of the 89th Congress, duly authorized and issued a subpena to Milton Mitchell Cohen. . . .

Pursuant to resolution of the Committee on Un-American Activities duly adopted at a meeting held January 13, 1966, the facts relating to the aforesaid failures of Milton Mitchell Cohen are hereby reported to the House of Representatives, to the end that the said Milton Mitchell Cohen may be proceeded against for contempt of the House of Representatives in the manner and form provided by law.

After the reading of the voluminous report was dispensed with by unanimous consent, the Chair entertained the point of order by Mr. Yates.

The Speaker overruled the point of order after extensive argument on the proper interpretation of Rule XI clause 26(m).[11]

A privileged resolution, certifying the report to the United States Attorney, was then offered, debated, and agreed to.[12]

Point of Order Falls When Motion at Which It Is Directed Is Withdrawn

§ 4.6 A motion that the House resolve into the Committee of the Whole for consideration of a bill may be withdrawn pending a point of order against consideration of the bill (for failure of the report to comply with the "Ramseyer" rule), and if withdrawn, the Chair is not obligated to rule on the point of order.

On Dec. 3, 1979,[13] Mr. Henry A. Waxman, of California, moved that the House resolve into the Committee of the Whole to consider the Child Health Assurance Act of 1979. Before the question was put by the Speaker Pro Tempore, a point of order was raised against consideration. The proceedings are carried herein.

MR. WAXMAN: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the

11. *House Rules and Manual* § 735 (1965). For the current rule, see *House Rules and Manual* § 712 (1997).

12. H. Res. 1060, 112 CONG. REC. 27448–85, 89th Cong. 2d Sess.

13. 125 CONG. REC. 34385, 96th Cong. 1st Sess.

State of the Union for the consideration of the bill (H.R. 4962) to amend title XIX of the Social Security Act to strengthen and improve medicaid services to low-income children and pregnant women, and for other purposes.

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE:[14] The gentleman from Maryland will state the point of order.

MR. BAUMAN: Mr. Speaker, I make a point of order against the present consideration of the bill, H.R. 4962, on the grounds that the committee report fails to comply with the provisions of clause 3 of rule XIII, the so-called Ramseyer rule.

The relevant provision of clause 3 of rule XIII requires that—

> Whenever a committee reports a bill or a joint resolution repealing or amending any statute or part thereof it shall include in its report or in an accompanying document—a comparative print of that part of the bill or joint resolution making the amendment and of the statute or part thereof proposed to be amended, showing by stricken-through type and italics, parallel columns, or other appropriate typographical devices the omissions and insertions proposed to be made.

Section 4 of the bill amends subparagraph (B) of section 1905(a)(4) of title XIX of the Social Security Act. This amendment is properly shown in italic type on page 111 of the report (H. Rept. 96–568). Section 4 further amends section 1905(a)(4) by adding a new subparagraph (D). This amendment is also properly shown in italic type. Subparagraph (C) of this section of the Social Security Act is not amended, but the committee report also has this provision shown in italic type indicating that it is a change in existing law, and is, therefore, in violation of the House rule. Subparagraph (C) is not an amendment nor is it amended by the bill and, therefore, the committee report is in violation of the provisions of clause 3 of rule XIII, which has the purpose of clearly showing existing law and proposed amendments to that law.

The purpose of the rule is to make it readily apparent what change in existing law is intended. I cite volume 8, chapter 236, section 2236 of "Cannon's Precedents of the House of Representatives" in support of this. On Monday, February 3, 1930, the House was considering bills on the Consent Calendar, when the bill—H.R. 8156—to change the limit of cost for the construction of the Coast Guard Academy was reached.

MR. FIORELLO H. LA GUARDIA, of New York, made the point of order that the change proposed in the law was not properly indicated in the report.

The Speaker, the great Mr. Longworth of Ohio, sustained the point of order and said:

> It is perfectly apparent to anyone reading the bill that its language is not exactly in the form prescribed by the Ramseyer rule, which provides that—
>
> "Whenever a committee reports a bill or joint resolution repealing or amending any statute or part thereof it shall include in its report or in an accompanying document—
>
> "(1) the text of the statute or part thereof which is proposed to be repealed; and

14. John Joseph Moakley (Mass.).

"(2) a comparative print of that part of the bill or joint resolution making the amendment and of the statute or part thereof proposed to be amended showing by stricken-through type and italics, parallel columns or other appropriate typographical devices, the omissions and insertions proposed to be made."

The Chair does not think that the rule has been complied with. What is required under the second part has not been done. Of course the rule is intended to make it evident just what change in a bill or resolution is intended. It is to make this change apparent to anybody without consulting the statute which it is intended to amend.

Mr. Speaker, the report on H.R. 4962 does not make it evident just what change is intended. The report does not make it apparent what is being amended without consulting the statute. In fact, the report clearly and erroneously indicates a section of existing law is amended when it is not.

Furthermore, Mr. Speaker, I note that the report has not even "substantially" complied with the rule. The precedents demonstrate that substantial compliance is achieved even though the report may contain errors of punctuation, capitalization, or abbreviations which are at variance with the bill. The report error here goes far beyond these minor problems and causes difficulty in clearly discerning what this amends and what is now statutory law. The fact that this appears in italic type signifies it as an amendment, which it is not. The report causes confusion rather than clarification and is, therefore, clearly in violation of the rule.

THE SPEAKER PRO TEMPORE: Does the gentleman from California desire to be heard on the point of order?

MR. WAXMAN: Yes, Mr. Speaker, I do desire to be heard on the point of order.

Mr. Speaker, there are over 20 pages in the proposed bill. The gentleman is referring to one paragraph, in which I am informed has a typographical error; but the point that I would make in opposition to the point of order that is made is that the Ramsayer is in substantial compliance with the rule and that on that basis the point of order ought to be overruled.

THE SPEAKER PRO TEMPORE: The Chair would ask the gentleman from California (Mr. Waxman) to withhold his motion until the Chair can ascertain whether the Ramsayer rule was violated by the committee or whether a typographical error by the Government Printing Office exists in the report.

Will the gentleman withdraw his motion?

MR. WAXMAN: Mr. Speaker, I will withhold my motion.

MR. BAUMAN: Mr. Speaker, if I may be heard further, for the Chair's deliberations I would only indicate that the gentleman from California (Mr. Waxman) has offered as his only rebuttal that this is substantial compliance and not anything more than an error.

The fact of the matter that the section is involved I discovered only because of the substantive nature of that section in my own desire to possibly offer amendments. Now, if this gentleman was misled, I am sure other Members may have been misled, and I think the purpose of this rule is to prevent that.

THE SPEAKER PRO TEMPORE: The motion to go into committee has been withdrawn, so the Chair will at the present time withhold its ruling.

Against Ramseyer Rule Violations

§ 4.7 A point of order that a report fails to comply with the requirement that proposed changes in law be indicated typographically, as required by the Ramseyer rule, is properly made when the bill is called up in the House and before the House resolves into the Committee of the Whole.

On July 13, 1959,[15] immediately after Mr. Thomas G. Abernethy, of Mississippi, moved that the House resolve itself into the Committee of the Whole for the consideration of the bill, Mr. H. R. Gross, of Iowa, inquired of the Speaker:

> MR. GROSS: Mr. Speaker, I desire to make a point of order against the consideration of the bill and the report. When is the proper time to seek recognition for this purpose?
>
> THE SPEAKER PRO TEMPORE:[16] This is the proper time for the gentleman to make his point of order.

Thereupon, Mr. Gross made a point of order against language found in the bill which, under the Ramseyer rule, was not stated in the accompanying report in italicized or other distinctive print. Mr. Abernethy then obtained unanimous consent that the motion be withdrawn and that the bill be recommitted to the committee.

§ 4.8 The proper time to raise a point of order that a committee report fails to comply with the Ramseyer rule is when the motion is made to go into the Committee of the Whole to consider the bill.

On July 30, 1968,[17] during debate on House Resolution 1218, which provided that it should be in order to move that the House resolve itself into the Committee of the Whole for the consideration of a bill to amend the Food and Agriculture Act of 1965, Mr. Paul Findley, of Illinois, unsuccessfully attempted to raise a point of order against further consideration of the resolution on the ground that the committee report accompanying the bill did not comply with the provisions of the Ramseyer rule. Speaker Pro Tempore John J. Rooney, of New York,

15. 105 CONG. REC. 13226, 13227, 86th Cong. 1st Sess. Under consideration was H.R. 6893, a bill to amend the District of Columbia Stadium Act of 1957 with respect to motor vehicle parking areas.

16. John W. McCormack (Mass.).

17. 114 Cong. Rec. 24245, 24252, 90th Cong. 2d Sess. Under consideration was H.R. 17126, the extension of the 1965 Food and Agriculture Act.

then ruled that a point of order on that ground was not appropriate at that time. Mr. Findley then inquired as to when the point would be in order. The Speaker Pro Tempore then stated that it could be raised when the motion was made to go into the Committee of the Whole.

After the previous question was ordered on the resolution and the resolution was agreed to, Mr. William R. Poage, of Texas, moved that the House resolve itself into the Committee of the Whole for the consideration of the bill. Speaker John W. McCormack, of Massachusetts, then heard Mr. Findley on his point of order.

§ 4.9 Where, pending a motion to consider a bill in Committee of the Whole, a point of order was made against a bill on the ground that the report did not comply with the Ramseyer rule, and the contention was made that the point of order came too late, the House having already adopted a resolution making consideration of the bill in order, the Chair overruled the point of order, but by so doing indicated that the point of order was timely.

On Oct. 1, 1963,[18] Mr. Armistead I. Selden, Jr., of Alabama, moved that the House resolve itself into the Committee of the Whole for the consideration of a bill and Speaker John W. McCormack, of Massachusetts, immediately put the question on the motion. Mr. Frank T. Bow, of Ohio, then stated a point of order against the bill on the basis that the report accompanying the bill did not comply with the Ramseyer rule.

In debate on the point of order, Mr. Selden contended that the point of order was too late because a resolution had been adopted to provide for the consideration and that the provision questioned by Mr. Bow did not make a specific change in the provisions of the law as Mr. Bow had argued. To this Mr. Bow responded that under the rules of the House, even though a resolution had been adopted, the point of order under the Ramseyer rule had to come immediately before the House went into the Committee of the Whole. Consequently, argued Mr. Bow, the point of order did not come too late.

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18. 109 CONG. REC. 18412, 88th Cong. 1st Sess. Under consideration was H.R. 7044, a bill to amend Pub. L. No. 193 [83d Cong.], relating to the Corregidor-Bataan Memorial.

The Chair overruled the point of order, holding that there had been an adequate compliance with the Ramseyer rule, and, thus, by implication, indicating that the point of order was timely.

Time for Making Point of Order Against Conference Report

§ 4.10 A point of order against a conference report must be made after the reading of the report and before the reading of the joint statement.

A Member wishing to make a point of order against a portion of a conference report on a bill carrying a Senate number, on the basis that one of the provisions proposed by the Senate and included in the conference agreement would not have been germane if offered to the House version when the bill was under consideration in the House, has a narrow window of opportunity. The proceedings of Dec. 15, 1975,[19] illustrate one of the first applications of the new rule adopted in the 93d Congress.[20]

CONFERENCE REPORT ON S. 622, ENERGY POLICY AND CONSERVATION ACT

MR. [HARLEY O.] STAGGERS [of West Virginia]: Mr. Speaker, I call up the conference report on the Senate bill (S. 622) to increase domestic energy supplies and availability; to restrain energy demand; to prepare for energy emergencies; and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

MR. [BARRY] GOLDWATER [Jr., of California]: Mr. Speaker, I make a point of order.

THE SPEAKER:[1] The gentleman from California will state his point of order.

MR. GOLDWATER: Mr. Speaker, I make a point of order against title V, part B.

THE SPEAKER: The Chair would request that the gentleman withhold his point of order until we have had the title of the bill read by the Clerk.

The Clerk read the title of the bill.

THE SPEAKER: Is there objection to the request of the gentleman from West Virginia?

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19. 121 CONG. REC. 40671, 40675–77, 40680, 40681, 94th Cong. 1st Sess.

20. The original concept of permitting points of order to address "non-germane" provisions in conference agreements was included in amendments to the rules adopted in the 92d Congress. See H. Res. 11532, Oct. 13, 1972, p. 36023. The pertinent rule, Rule XXVIII clause 4(a), was further amended in the 93d Congress to bring within the application of the rule provisions in a Senate bill sent to conference if they would not have been considered germane if offered to the House version. See H. Res. 998, Apr. 9, 1974, which added the last sentence to clause 4(a). See *House Rules and Manual* § 913(b) (1997).

1. Carl Albert (Okla.).

MR. [OLIN E.] TEAGUE [of Texas]: Mr. Speaker, I reserve a right to object.

THE SPEAKER: The gentleman from Texas (Mr. Teague) reserves a right to object.

The Chair states that the right of the gentleman from California (Mr. Goldwater) will be protected. . . .

THE SPEAKER: Is there objection to the request of the gentleman from West Virginia (Mr. Staggers)?

MR. [JOHN B.] ANDERSON of Illinois: Mr. Speaker, reserving the right to object, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. ANDERSON of Illinois: I address the Chair with the following parliamentary inquiry: At which point would it be in order to offer or make a point of order against section 102 of the conference report?

THE SPEAKER: If objection to the reading of the statement is not made, or at any time prior to reading the statement. The Chair has promised he is going to recognize the gentleman from California first on that issue, either now or at that point.

MR. ANDERSON of Illinois: Mr. Speaker, if I still have the floor, I make a point of order against section 102 of the conference report.

THE SPEAKER: The gentleman will not be recognized because there is a unanimous-consent request pending.

MR. ANDERSON of Illinois: May I reserve a point of order against that section?

THE SPEAKER: The gentleman's rights will be protected, but the Chair has already promised the gentleman from California that he would recognize him first on his point of order. . . .

THE SPEAKER: Is there objection to the request of the gentleman from West Virginia?

There was no objection.

THE SPEAKER: The Chair recognizes the gentleman from California (Mr. Goldwater).

MR. GOLDWATER: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. GOLDWATER: Mr. Speaker, I make a point of order to that part of section 301 which adds to the new motor vehicle improvements and cost saving account a new title V, part B, entitled "Application Advanced Automotive Technology."

My point of order is that it is nongermane, pursuant to clause 4, rule XXVIII.

Part B of title V was not in the House bill, as passed in H.R. 7014, but it was in the Senate version and it is in the conference report.

If the section had been offered as an amendment on the House floor, it would have been subject to a point of order as nongermane. Hence, it is subject to a nongermaneness point of order now under rule XXVIII, clause 4.

May I point out to the Speaker that the automotive R & D part of title V is wholly unrelated to the oil pricing and conservation thrust of the bill. Besides, the Science and Technology Committee has jurisdiction of all nonnuclear energy R. & D. matters, and this is an R. & D. incentive program which clearly falls in that jurisdiction.

The original Senate version of section 546 was contained in title II of the

Senate bill (S. 1883). H.R. 9174 was introduced on July 31, 1975, by the gentleman from Washington (Mr. McCormack) and was referred to the Committee on Science and Technology. H.R. 9174 basically included all of title II of the Senate bill (S. 1883), specifically the loan guarantee provision. The committee jurisdiction was positively established by that referral.

Mr. Speaker, I insist on my point of order.

MR. STAGGERS: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. STAGGERS: Mr. Speaker, my parliamentary inquiry is that I had asked unanimous consent that the statement on the part of the managers be read in lieu of the report.

Mr. Speaker, I would like to go through with that before any other unanimous-consent requests or any other points of order are made against the bill. It does not jeopardize any point of order and then I would be glad to answer any questions.

THE SPEAKER: The Chair had asked whether there was any objection to the request and there was no objection. It was so ordered.

MR. STAGGERS: So, Mr. Speaker, it is now considered as read?

THE SPEAKER: The request that the statement be read in lieu of the report has been granted. It does not jeopardize any point of order.

MR. GOLDWATER: Mr. Speaker, I yield to the gentleman from Texas (Mr. Teague).

THE SPEAKER: Does the gentleman wish to be heard further on the point of order?

MR. TEAGUE: Mr. Speaker, I would like to be heard on the point of order.

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Speaker, I would like to be heard on the point of order at the appropriate time.

MR. GOLDWATER: Mr. Speaker, I yield back my time. I have made my point of order.

MR. DINGELL: Mr. Speaker, I think that this is not a good point of order, but out of grace and in order to give the House a chance to vote on this as an orderly procedure—I protested the disorderly procedure with the ERDA bill which was before us—but in order to have orderly procedure I will not contest the point of order, and I do not think my good friend from West Virginia, the chairman of the committee (Mr. Staggers) will contest it. Under those circumstances, I think it is appropriate for the Chair to rule on the point of order with regard to germaneness in order that we may proceed.

MR. STAGGERS: Mr. Speaker, I would say that we have a separate vote on the point of order and then under those circumstances we would be able to proceed.

THE SPEAKER: The point of order is conceded and sustained.

MR. STAGGERS: I would say to the gentleman from California that it is without prejudice——

MR. TEAGUE: Whether he concedes it or not, I would like to be heard on the point of order.

THE SPEAKER: The Chair is going to sustain the point of order.

MR. TEAGUE: Mr. Speaker, may I reserve the right to make a point of order? I am going to make a point of order against the whole conference report.

THE SPEAKER: That would come later.

MR. TEAGUE: But the Speaker will reserve my right?

THE SPEAKER: Could the Chair make himself clear to the gentleman? That might depend upon the outcome of the motion the gentleman from California will make.

MR. DINGELL: I think the gentleman wants to be heard; he desires to be heard.

I ask unanimous consent that he be heard at this time on the point of order which, by concession, without waiving questions of jurisdiction——

THE SPEAKER: The Chair has no authority to hear arguments on matters not related to the point of order made by the gentleman. If the gentleman from California makes a motion, the business which transpires after the motion made by the gentleman will determine whether certain other points of order will be in order.

MR. GOLDWATER: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. GOLDWATER: Has the Chair ruled on the point of order.

THE SPEAKER: The Chair sustained the point of order.

MR. GOLDWATER: Mr. Speaker, I offer a motion.

The Clerk read as follows:

> Mr. Goldwater moves that part B, title V in section 301 of S. 622 be rejected.

THE SPEAKER: The gentleman from California (Mr. Goldwater) is recognized for 20 minutes and the gentleman from West Virginia (Mr. Staggers) is recognized for 20 minutes.

The Chair recognizes the gentleman from California. . . .

THE SPEAKER: The question is on the motion offered by the gentleman from California (Mr. Goldwater).

The question was taken; and the Speaker announced that he was in doubt.

MR. GOLDWATER: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 300, nays 103, not voting 31, as follows. . . .

§ 4.11 Rule XXVIII clause 4(a), was amended in the 96th Congress to provide that if a conference report is considered read, then a point of order should be made immediately when consideration of the report begins.

Rule XXVIII, dealing with conference reports and amendments in disagreement, now provides that if the report or amendments reported in disagreement have been available for three calendar days (excluding any Saturday, Sunday, or legal holiday) after filing and if printed in the Record, can be considered as read when called up for consideration. Clause 4(a) now reflects this reality, and so points of order on the germaneness of amendments included in the conference agreement or reported in disagreement must be made immediately at the inception of consideration.[2]

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2. See the current provisions of Rule XXVIII clause 4(a) *House Rules and*

§ 4.12 A point of order against a conference report can only be raised after the reading of the report has been completed or has been dispensed with by unanimous consent.

Until the addition of clause 2(c) of rule XXVIII, which provides that a conference report which has been available in accordance with clause 2(a) shall be "considered as having been read when called up for consideration," a point of order could be raised against a conference report only after the reading of the report had been completed or waived. The proceedings of Sept. 30, 1976,[3] show the application of this earlier practice.

CONFERENCE REPORT ON H.R. 12572, U.S. GRAIN STANDARDS ACT OF 1976

MR. [THOMAS S.] FOLEY [of Washington]: Mr. Speaker, I call up the conference report on the bill (H.R. 12572) to amend the U.S. Grain Standards Act to improve the grain inspection and weighing system, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

MR. [W. HENSEN] MOORE [of Louisiana]: Mr. Speaker, I make a point of order against consideration of this conference report.

THE SPEAKER:[4] The gentleman will state his point of order.

MR. MOORE: Mr. Speaker, the conference report, in particular section 8, subparagraph (5), violates clause 3 of rule XXVIII of the rules of the House.

THE SPEAKER: Will the gentleman withhold his point of order, because the gentleman is premature. We have to read the report before the point of order would lie.

MR. MOORE: My rights will be protected to raise the point of order, Mr. Speaker?

THE SPEAKER: The gentleman's rights will be protected. . . .

Is there objection to the request of the gentleman from Washington?

There was no objection.

MR. MOORE: Mr. Speaker, I reserve my point of order on the conference report.

THE SPEAKER: The gentleman from Louisiana (Mr. Moore) reserves a point of order on the conference report.

Does the gentleman from Washington (Mr. Foley) request that this matter be put over and be made the first order of business tomorrow?

MR. FOLEY: Mr. Speaker, I ask unanimous consent that the further consideration of this conference report be

Manual (1997), particularly the annotations thereto in § 913, wherein it is stated "The clause was . . . amended in the 96th Congress (H. Res. 5, Jan. 15, 1979, pp. 7–16) to provide that if the conference report is considered read under clause 2(c) of this rule, a point of order under this clause must be made immediately upon consideration of the conference report."

3. 122 CONG. REC. 34224, 34225, 94th Cong. 2d Sess.

4. Carl Albert (Okla.).

postponed, and that it be made the first order of business tomorrow.

THE SPEAKER: Is there objection to the request of the gentleman from Washington?

There was no objection.

§ 4.13 A point of order against a conference report (which has not been printed in the Record for three days and is therefore not "considered as read" when called up) must be made or reserved before the reading of the joint statement where by unanimous consent the statement is read in lieu of the report.

Rule XXVIII, "Conference Reports," was amended in 1979 by the addition of clause 2(c),[5] which specifies that any conference report or a Senate amendment in disagreement which has been filed and printed in the Record for three days is "considered as having been read when called up for consideration." However, if a conference report is called up before the three-day requirement is met, it must still be read. The following sequence of events on Oct. 1, 1980,[6] illustrate how a point of order against a conference report has to be made in a timely fashion.

MR. [NEAL] SMITH of Iowa: Mr. Speaker, I call up the conference report on the bill (H.R. 5612) to amend section 8(a) of the Small Business Act, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

MR. [GEORGE E.] DANIELSON [of California]: Mr. Speaker, I make a point of order against this conference report.

THE SPEAKER PRO TEMPORE:[7] The gentleman will be protected.

Is there objection to the request of the gentleman from Iowa?

MR. [DAN] ROSTENKOWSKI [of Illinois]: Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: Objection is heard.

The Clerk will read the report.

The Clerk proceeded to read the report.

MR. SMITH of Iowa (during the reading): Mr. Speaker, I ask unanimous consent that the statement of the managers be read in lieu of the report.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Iowa?

MR. DANIELSON: Mr. Speaker, a while ago I raised a point of order against the conference report. I understood the Speaker to say that my point of order will be protected.

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. DANIELSON: If I am not waiving any rights, I will withdraw my reservation of objection.

5. *House Rules and Manual* § 912d (1997).

6. 126 CONG. REC. 28637–40, 96th Cong. 2d Sess.

7. William H. Natcher (Ky.).

THE SPEAKER PRO TEMPORE: Without objection, the statement of the managers will be read in lieu of the report.

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 30, 1980.)

Points of Order Against Conference Reports

§ 4.14 The Chair entertains and rules upon points of order against conference reports which, if sustained, will vitiate the entire conference report (as under the Congressional Budget Act) before entertaining points of order against portions of the report (under Rule XXVIII clause 4, e.g.) which, if sustained, merely permit a motion to reject the nongermane portion of the report.

On Sept. 23, 1976,[8] Mr. Joseph P. Vigorito, of Pennsylvania, called up a conference report on the bill H.R. 10339, the Farmer to Consumer Direct Marketing Act of 1976. Mr. John H. Rousselot, of California, raised two points of order against the report, one under the Congressional Budget Act of 1974, which if sustained, would have prevented consideration of the report. The second point of order was against a nongermane portion of the conference agreement. Speaker Carl Albert, of Oklahoma, ruled on only the first point of order for the reasons which he stated at that time.

CONFERENCE REPORT ON H.R. 10339, FARMER TO CONSUMER DIRECT MARKETING ACT OF 1976

MR. VIGORITO: Mr. Speaker, I call up the conference report on the bill (H.R. 10339) to encourage the direct marketing of agricultural commodities from farmers to consumers, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER: Is there objection to the request of the gentleman from Pennsylvania?

MR. ROUSSELOT: Mr. Speaker, I make a point of order.

THE SPEAKER: The gentleman will state his point of order.

MR. ROUSSELOT: Mr. Speaker, I have two points of order to raise against the conference report on H.R. 10339 (H. Rept. 94–1516).

The first is under the Budget Control Act. The second is under House Rule XXVIII.

Section 401(b)(1) of the Congressional Budget and Impoundment Control Act (Public Law 93–344) provides as follows:

(b) Legislation Providing Entitlement Authority.—

8. 122 CONG. REC. 32099, 32100, 94th Cong. 2d Sess.

(1) It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(C) (or any amendment which provides such new spending authority) which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.

The text of the conference agreement as set forth in the amendment adding a new section 8 is as follows:

EMERGENCY HAY PROGRAM

SEC. 8. In carrying out any emergency hay program for farmers or ranchers in any area of the United States under section 305 of the Disaster Relief Act of 1974 because of an emergency or major disaster in such area, the President shall direct the Secretary of Agriculture to pay 80 percent of the cost of transporting hay (not to exceed $50 per ton) from areas in which hay is in plentiful supply to the area in which such farmers or ranchers are located. The provisions of this section shall expire on October 1, 1977.

It is clear from a literal reading of this proposed language that certain livestock owners will be entitled to a hay subsidy immediately upon enactment of this bill.

This bill is effective during the so-called transition period of July 1–September 30, 1976.

In any event it is a new spending authority effective before October 1, 1976, which marks the beginning of fiscal year 1977 but occurs in the calendar year in which the conference report is being called up in the House.

"New spending authority" is defined in section 401(c)(2)(C) to include "payments . . . the budget authority for which is not provided for in advance by appropriation Acts, to any person . . . if . . . the United States is obligated to make such payments to persons . . . who meet the requirements established by such law."

In the instance at hand, hay payments are mandated by the language directing that the President shall direct the Secretary of Agriculture to pay 80 percent of hay transportation costs—up to $50 per ton.

The second point of order is that section 8 of the conference report is not in compliance with rule XXVIII, clause 4, and if such language were offered to H.R. 10339 during its consideration in the House it would not be deemed to be germane under rule XI, clause 7.

THE SPEAKER: Does the gentleman from Pennsylvania (Mr. Vigorito) desire to be heard on the points of order?

MR. VIGORITO: Yes, Mr. Speaker, I would like to be heard on the two points of order.

THE SPEAKER: The gentleman from Pennsylvania is recognized.

MR. VIGORITO: Mr. Speaker, my understanding is that if this program is an entitlement program under section 401 of the Budget Act, the funding could not be given an authorization in this bill until the beginning of the next fiscal year, or, in this case, October 1, 1976. If that is the case, I would think that we could develop legislative intent here in that none of the funding would begin in this bill until fiscal year 1977. As a practical matter, the bill will probably not have cleared the President prior to that time, anyway, and consequently we will not be delaying the impact of the bill for any substan-

tial length of time. We have less than a week before October 1 comes about. . . .

THE SPEAKER: The Chair is having difficulty with the argument made by the distinguished gentleman from Pennsylvania, because, as the Chair understands it, theoretically and legally it would be possible to begin the payments before October 1, 1976, which would be in violation of the Budget Impoundment and Control Act, as the entitlement to those payments might vest prior to October 1. If, as the Chair understands it, the entitlement to payments only vested after October 1, 1976, there would be no violation of the Budget Control Act.

What is the gentleman's answer to that?

MR. VIGORITO: The intent is only to begin after October 1, 1976.

THE SPEAKER: Of course, the Chair sees before him language which it seems to the Chair—and the Chair is sympathetic with what the gentleman is trying to do—indicates that:

> In carrying out any emergency hay program for farmers or ranchers in any area of the United States under section 305 of the Disaster Relief Act of 1974 because of an emergency or major disaster in such area, the President shall direct the Secretary of Agriculture to pay 80 percent of the cost of transporting hay (not to exceed $50 per ton) from areas in which hay is in plentiful supply to the area in which such farmers or ranchers are located. The provisions of this section shall expire on October 1, 1977.

This language does not say when the entitlement to payments vests and does not imply when the payments begin. It does say when the payments end. But the point is that the payments cannot begin before October 31, 1976, without violating the Congressional Budget Act. . . .

The Chair thinks that under the present circumstances he should insist that the gentleman consider another procedure, because he thinks it can be worked out. Therefore, the Chair must sustain the point of order.

The Chair will not rule on the second point of order, on germaneness grounds, because one point of order against the entire conference report has been sustained.

Will the gentleman undertake to work that out within the next day or two?

MR. VIGORITO: Mr. Speaker, I ask unanimous consent to pull this off so that we can work this out.

THE SPEAKER: The conference report is no longer before the House. The gentleman can dispose of the Senate amendments under another procedure.

§ 4.15 Where a conference report is considered as having been read and then further proceedings are postponed by unanimous consent, points of order against the report may still be raised when the report is again before the House as unfinished business.

On Sept. 23, 1976,[9] the chairman of the Select Committee on the Outer Continental Shelf called

9. 122 CONG. REC. 32102, 32103, 94th Cong. 2d Sess.

up the conference report on the measure S. 521, a bill which had been reported by the ad hoc committee. The proceedings were as follows:

OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1976

MR. [JOHN M.] MURPHY of New York: Mr. Speaker, I call up the conference report on the Senate bill (S. 521) to increase the supply of energy in the United States from the Outer Continental Shelf; to amend the Outer Continental Shelf Lands Act; and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate bill.

THE SPEAKER:[10] Is there objection to the request of the gentleman from New York?

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Speaker, reserving the right to object, I should like to ask the chairman of the ad hoc select committee at this time if he will withdraw this report from consideration or seek to postpone further consideration of the report. If not, those on this side will be constrained to object to the request of the gentleman from New York.

Mr. Speaker, the House should not squander its precious remaining hours on a bill that is clearly destined, if not designed, to be vetoed.

MR. MURPHY of New York: Mr. Speaker, I have no intention to withdraw the conference report.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, then I object.

THE SPEAKER: Objection is heard. The Clerk will read.

The Clerk read as follows:

(For Conference Report and statement see proceedings of the House of September 20, 1976.) . . .

OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1976

MR. MURPHY of New York: Mr. Speaker, I ask unanimous consent to dispense with further reading of the report, and that consideration thereof be the unfinished business when the House convenes on Tuesday next.

THE SPEAKER PRO TEMPORE:[11] Is there objection to the request of the gentleman from New York?

MR. FISH: Mr. Speaker, I reserve the right to object.

Mr. Speaker, reserving the right to object—and I shall not object—I wish to be sure that I understand the request of the gentleman from New York. The gentleman is asking that: First, the rest of the report be considered as read; second, that further consideration today be dispensed with; and, third, that it not be considered until next Tuesday at the earliest.

Also, Mr. Speaker, I reserve several points of order against the conference report, and would ask, is this the understanding with my reservation of these points of order?

THE SPEAKER PRO TEMPORE: The points of order will still be in order.

MR. FISH: I thank the Chair.

MR. MURPHY of New York: I would clarify for my colleague that the unanimous-consent request specifically stated that this would be the first order of business on Tuesday next.

10. Carl Albert (Okla.).

11. Thomas P. O'Neill, Jr. (Mass.).

MR. FISH: On Tuesday next?

MR. MURPHY of New York: Tuesday next.

MR. FISH: Not before that?

THE SPEAKER PRO TEMPORE: The first order of unfinished business on Tuesday next.

MR. MURPHY of New York: That is correct.

MR. FISH: Mr. Speaker, further reserving the right to object, is the Chairman also of the opinion that the several points of order which I have so reserved will be protected when we take this matter up?

MR. MURPHY of New York: If the gentleman will yield, the Chair always protects the points of order of the minority.

MR. FISH: Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from New York?

There was no objection.

Consideration of Conference Report, Precedence Over Point of Order

§ 4.16 Where further consideration of a conference report (which had been considered as read by unanimous consent) has been postponed to a date certain, it is in order to raise the question of consideration when the report is again called up as unfinished business, and the question of consideration is disposed of before the Chair entertains points of order against the report.

The question of consideration of a conference report is in order immediately after its reading and before debate begins, and, as the proceedings of Sept. 28, 1976,[12] illustrate, where the reading of a report is, by unanimous consent, dispensed with and then consideration postponed, the question of consideration remains available when the conference report is called up as unfinished business.

CONFERENCE REPORT ON S. 521, OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1976

THE SPEAKER:[13] The unfinished business is the further consideration of the conference report on the Senate bill S. 521, which the Clerk will report by title.

The Clerk read the title of the Senate bill.

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Speaker, I demand the question of consideration.

THE SPEAKER: The question is, Will the House now consider the conference report on the Senate bill S. 521.

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. FISH: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 236, nays 150, not voting 44, as follows: . . .

12. 122 CONG. REC. 33018, 33019, 94th Cong. 2d Sess.

13. Carl Albert (Okla.).

So consideration of the conference report was ordered.

The result of the vote was announced as above recorded.

MR. FISH: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. FISH: Mr. Speaker, my parliamentary inquiry is as to whether my reserved points of order are in order at this time?

THE SPEAKER: The Chair will state that they are.

Point of Order Against Failure To Have "Open Conference"

§ 4.17 Where the minutes of a conference meeting indicate that an open meeting of the House and Senate managers had been held and that a motion was adopted which finally disposed of all matters in disagreement, as reflected by the signatures of a majority of the conferees from each House, a Member must show that there was a subsequent meeting of the conferees in violation of the rule requiring open conference meetings for a point of order to lie.

Until clause 6 was added to Rule XXVIII on Jan. 14, 1975, conferees often met behind closed doors. But with the adoption of clause 6,[14] all conference meetings had to be open to the public unless, by roll call vote in the conference, a majority of the managers of both Houses voted to close the meeting. This clause was further amended on Jan. 4, 1977,[15] to require a roll call vote in the House to permit the managers to exercise their discretion to close a meeting. Another amendment to the rule occurred in the 96th Congress,[16] to provide that if the conference report is considered as read because it has been printed and is available under clause 2(c), a point of order under this "open conference" rule must be made immediately when the conference report is called up.

The discussion which occurred on the House floor on Sept. 28, 1976,[17] illustrates the application of the current rule and the importance of having a final meeting of the conferees which complies with this rule.

The conference report on S. 521, the Outer Continental Shelf Lands Act, had been called up and read on Sept. 23, 1976.[18]

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14. H. Res. 5, 121 CONG. REC. 20–33, 94th Cong. 1st Sess.

15. H. Res. 5, 123 CONG. REC. 53–70, 95th Cong. 1st Sess.

16. H. Res. 5, 125 CONG. REC. 7–16, 96th Cong. 1st Sess., Jan. 5, 1979.

17. 122 CONG. REC. 33019, 33020, 94th Cong. 2d Sess.

18. See § 4.13, supra.

On Sept. 28, 1976, it was before the House as unfinished business. The question of consideration having been decided in the affirmative, points of order were entertained.

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Speaker, I make a point of order against the conference report on grounds that it has been reported in violation of Rule XXVIII, clause 6, which requires that conference meetings be open to the public except when ordered closed by rollcall vote in open session.

Mr. Speaker, on the first day of this Congress, as one of its first moves toward reform, the House voted to amend its rules and open up conferences to public scrutiny. The Senate soon passed a similar measure, and the rule took effect.

At the first open meeting of the conference committee, one of the managers on the part of the Senate moved that the Senate recede from its disagreement to the House amendment with several amendments which he had caused to be printed as part of a conference document. Additional linear amendments were proposed by other Senate managers in the form of amendments to the motion, and in due course a majority of the Senators voted for the motion as amended.

The chairman of the conference committee, the gentleman from New York (Mr. Murphy) then moved that the House agree to the amendments of the Senate. This motion was presumably amendable, although the chairman refused to allow any amendments to be offered. If he had, they would have been restricted to germane modifications of the various Senate amendments which would have been the only items in disagreement at that time. The motion was rushed to a vote and agreed to by the House managers, and the conference meeting was adjourned.

Mr. Speaker, the conference committee must have met again. It must have met without any notice to the minority and far from public view. It must have met in closed session without first having voted to do so in open session. I must assume that there was a closed session of the conference committee, because instead of reporting linear Senate amendments, as had been agreed to in open session, the committee reported a Senate amendment in the nature of a substitute. . . .

There must have been one more meeting—a closed meeting—in which a majority of the Senate conferees and a majority of the House conferees agreed to switch from linear amendments to an amendment in the nature of a substitute without giving minority House managers a chance to offer amendments and without being open to the public. . . .

THE SPEAKER:[19] Does the gentleman from New York (Mr. Murphy) desire to be heard on the point of order?

MR. [JOHN M.] MURPHY of New York: I do, Mr. Speaker.

Mr. Speaker, on the point of order, I would refer to the recorded minutes of the conference on page 2 of the opening day of the conference. Senator Jackson moved that the conference be open to the public. The motion was sec-

19. Carl Albert (Okla.).

onded by Senator Jackson and adopted by the conference without objection. If my colleague, the gentleman from New York, had been present at all sessions of the conference, I doubt if he would make this point of order. The motion made by Senator Jackson at the conference and on page 8 of the first day's minutes of the conference is as follows:

> Mr. Chairman, I therefore move the Senate recede from its disagreement with the House and accept the House amendment with the amendment set forth in the September 13 conference print, except the technical amendments that occur on page 123 of the print.

Mr. Speaker, if I understand the gentleman's argument, he is asserting that the Chair is to find an implied or "constructive" secret meeting of the majority of the conferees because the conference report is not consistent with the gentleman's interpretation of the procedures of the conference committee.

In the first place, there was no secret meeting and thus the rule relied upon by the gentleman was not violated.

In addition, I would point out that the conference report is consistent with the actions of the conference. Senator Jackson moved that the Senate recede from its disagreement and agree to the amendment of the House with an amendment. During the course of the deliberations, the Senate conferees agreed to modify Senator Jackson's proposed amendments. The Senate conferees then approved the Jackson motion.

The House conferees then agreed to adopt the language agreed to by the Senate conferees, to be inserted in lieu of the House amendment.

The conference report properly reflects these actions.

Moreover, rules of the House make it clear that once a conference report is filed by the required number of conferees there is a conclusive presumption as to the validity of the conference.

The Speaker will not look behind the signatures as to the procedures in conference.

Mr. Speaker, the gentleman's point of order should not be sustained. . . .

THE SPEAKER: The Chair is prepared to rule.

The gentleman from New York has made a point of order directed against conference procedure alleging a violation of clause 6, rule XXVIII.

The gentleman's point of order is that the form of the conference report does not conform to his understanding as to which motion was agreed to by the House conferees. The gentleman contends that there was a further constructive meeting of the conferees which was closed and unannounced.

The chief manager of the conference report has reported that in a meeting of the conferees which was open to the public, pursuant to the provisions of clause 6, rule XXVIII, a proper motion was made to agree to an amendment in the nature of a substitute for the House amendment to the Senate bill, and the signatures of a majority of the conferees of both Houses reflecting this agreement appear on the conference report.

The Chair does not feel that a violation of conference rules has been shown, and the Chair overrules the point of order.

Where Multiple Points of Order Directed Against Conference Report

§ 4.18 The Chair may in his discretion require all points of order against a conference report for alleged violation of a particular House rule to be stated before he rules on any, to allow the Chair to determine the order in which he will decide the questions of order.

When the voluminous conference report on the Outer Continental Shelf Lands Act Amendments of 1976 (S. 521, 94th Cong.) was called up on Sept. 28, 1976,[20] the Speaker was informed that several points of order would be lodged against the report. He first heard argument on and ruled on a point of order brought under the "open conference rule."[1] After overruling this point of order, the Chair then turned to arguments based on the "scope of conference" rule.[2] The proceedings are carried in full below.

MR. [HAMILTON] FISH [Jr., of New York]: Mr. Speaker, I make a point of order against the conference report.

THE SPEAKER:[3] The gentleman will state it.

MR. FISH: Mr. Speaker, I make a point of order against the conference report on the grounds that in section 208 the managers have exceeded their authority in several instances and in section 101 in one instance, and the report, therefore, is in violation of clause 3 of rule XXVIII.

Mr. Speaker, so as not to burden the House with unnecessary discussion, I will ask the Chair to rule on these questions of scope one at a time, because as soon as one is upheld, consideration of the others will not be needed.

THE SPEAKER: The Chair must state that when more than one point of order is going to be made under a particular House rule, it is proper under the precedents for the Chair to require all such points of order to be stated and for the Chair then to make his decision on the separate points of order, and the Chair intends to follow that procedure.

MR. FISH: Very good, Mr. Speaker.

THE SPEAKER: The Chair will hear all the arguments of the gentleman.

MR. FISH: Mr. Speaker, prior to 1971, managers considering a bill and an amendment in the nature of a substitute were free to exercise wide discretion in discarding language appearing in both versions and in making germane amendments, even beyond the scope of the various issues in disagreement. All this was changed by the Legislative Reorganization Act of 1970. Section 125(B) of that act revised clause 3 of rule 28, so that each spe-

20. 122 CONG. REC. 33020, 33021, 33023, 94th Cong. 2d Sess.

1. Rule XXVIII clause 6(a), *House Rules and Manual* § 913d (1997).

2. Rule XXVIII clause 3, *House Rules and Manual* § 913a (1997).

3. Carl Albert (Okla.).

cific topic, question, issue, or proposition must now be looked at individually, as if linear amendments had been made by one House to the bill of the other. Under this rule the conferees cannot report new matter not committed by either House. Also, where the two Houses propose different language on a particular issue, the two versions set the boundaries for conference consideration of that issue. Amendments outside those boundaries may not be reported, even if germane. Where one House is silent on an issue proposed by the other, the silent House is deemed to be incorporating current law, if any, on the subject into its version. If both versions contain matter on a given issue, that issue must be reported by the conference, in disagreement if necessary. Finally, since the substitute is being handled as if it were several linear amendments, it is not in order for the managers to modify or fail to report language which is identical in both versions. . . .

Mr. Fish then proceeded to make several specific points of order, all charging that the conference report violated Rule XXVIII clause 3, by including matters "beyond the scope" of the text submitted to conference. The Speaker heard all the points of order, all the refutations by the manager, Mr. Murphy, as shown, and then ruled.

MR. [JOHN M.] MURPHY of New York: Mr. Speaker, before reviewing as the specific points of order, I must review the rules and procedures of the House. Rule 28, paragraph three, indicates whenever a disagreement to a bill through an amendment in the nature of a substitute has been committed to a conference committee, the conference may report a total substitute so long as no additional topic, question, issue, or proposition is included and so long as any modification suggested by the conference. . . .

THE SPEAKER: The Chair is prepared to rule.

The gentleman from New York (Mr. Fish) argues in his first point of order under clause 3, rule XXVIII, that the conferees have exceeded the scope of the matter committed to conference by removing from the Secretary of the Department in which the Coast Guard is operating concurrent responsibility for considering allegations of violations of safety regulations. It is the Chair's opinion that the portions of the conference report dealing with safety regulations and enforcement must be read as a whole. The House and Senate versions had differing provisions on the various aspects of that subject and gave regulatory and enforcement responsibility to differing officials. The conference report compromise gives the authority to the Interior and Labor Departments and makes the conforming change in the provision dealing with consideration of allegations of violations. For the reasons stated by the gentleman from New York (Mr. Murphy) the Chair overrules the point of order.

The gentleman's second point of order on scope deals with the findings at the beginning of the conference report, wherein the conferees agreed to language finding adverse impacts on the various States. . . . The conference language is no broader than

the House language and the Chair overrules the point of order.

In his third point of order on scope, the gentleman from New York only points to language in the statement of managers and argues that a statement of intent by the conferees exceeds the scope of conference. Such a point of order must lie against language in the conference report itself and not in the joint statement and the Chair overrules the point of order.

The gentleman's fourth point of order on scope deals with the section of the conference report relating to judicial review. . . . The conference language clarifies the fact that the limitation on judicial review of the Secretary's determination does not inhibit seeking judicial review of the underlying activities on the Outer Continental Shelf and does not exceed the scope of the matter committed to conference.

The gentleman makes several additional points of order on scope. . . .

The last argument of the gentleman from New York is that the conferees have added the word "new" in a provision that did not contain that word in either the Senate bill or the House amendment. A careful reading of the Senate bill demonstrates that the two provisions were not identical, as the Senate bill contained the word "re-promulgate," not contained in the House amendment. Therefore, the issue whether the regulations were to be new regulations or could be existing regulations was a matter before the conferees.

For the reasons stated, the Chair overrules all the points of order.

Point of Order Against Conference Reports Entertained Pending Request That Statement Be Read in Lieu of Report

§ 4.19 The House rule which precludes managers on the part of the House at a conference with the Senate from agreeing to Senate amendments providing for appropriations in a conference agreement absent specific authority, applies only to Senate amendments which are sent to conference and not to appropriations contained in Senate legislative bills which are before the conferees.

On June 30, 1976,[4] when the conference report on S. 3295, a bill extending the National Housing Act, was called up for consideration in the House, the Member handling the report asked unanimous consent that the statement of the managers be read in lieu of the report. Pending this request, a point of order was raised against the report on the ground that it contained a provision permitting a new use of previously appropriated funds. Speaker Carl Albert, of Oklahoma, entertained

4. 122 CONG. REC. 21632–34, 94th Cong. 2d Sess.

the point of order. The arguments presented and the Chair's decision are carried herein.

MR. [HENRY S.] REUSS [of Wisconsin]: Mr. Speaker, I call up the conference report on the Senate bill (S. 3295) to extend the authorization for annual contributions under the U.S. Housing Act of 1937, to extend certain housing programs under the National Housing Act, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the Senate bill.

THE SPEAKER: Is there objection to the request of the gentleman from Wisconsin?

MR. [GARRY] BROWN of Michigan: Reserving the right to object, Mr. Speaker, I raise a point of order against the conference report.

THE SPEAKER: The gentleman will state his point of order.

MR. BROWN of Michigan: Mr. Speaker, I make a point of order against the conference report on S. 3295 on the basis that the House managers exceeded their authority by agreeing to two matters not in the original House amendment to the Senate bill and which violates clause 2, rule XX, of the House Rules and Precedents of the House. Clause 2, rule XX, reads in part as follows:

> Nor any amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill shall be agreed to by the managers on the part of the House unless specific authority to agree to such amendment shall first be given by the House by a separate vote on every such amendment.

The Senate-passed bill contains section 9(a)(2) and 9(b) which in effect provide for expenditures to be made from the various FHA insurance funds to honor claims made eligible for payment by the provisions of section 9 generally. These amendments are to section 518(b) of the National Housing Act and relate to sections 203 and 221 housing programs for which the authority of the Secretary of HUD to pay claims related to certain structural defects has expired if the claims were not filed by March 1976.

Both sections 9(a)(2) and 9(b) include identical language which states as follows:

> Expenditures pursuant to this subsection shall be made from the insurance fund chargeable for insurance benefits on the mortgage covering the structure to which the expenditures relate.

The words "Expenditures pursuant to this subsection shall be made from the insurance fund" constitute an appropriation within the meaning of clause 2, rule XX. Based on precedents under clause 5, rule XXI, it is clear that payments out of funds such as the FHA insurance fund are within the meaning of the term "appropriation" and that the action taken by the House managers is violative of clause 2, rule XX.

In support of this point of order, I cite the ruling of the Chair on a point of order raised by H. R. Gross on October 1, 1962, to the conference report on H.R. 7927. A Senate provision agreed to in that report provided that—

> The benefits made payable . . . by reason of enactment of this part shall be paid from the civil service retirement and disability fund.

Inasmuch as when the House agreed to go to conference, it did not give specific authority to agree to such an amendment. I therefore submit that it is not in order for such language to be included in the conference report.

The FHA insurance funds are designed to provide the reserves for payments on defaulted mortgages and for the operation of HUD related to the various insurance programs and any diversion of the use of such funds such as for payment for defects in the structure would violate clause 5 of rule XXI. In further support of this point of order, and specifically on the point that the provisions constitute a diversion of funds for a separate purpose not within the intention of the legislation establishing the fund, I cite the ruling of the Chair on October 5, 1972, which holds that an amendment allowing for the use of highway trust fund moneys to purchase buses, would seem to violate clause 4 of rule XXI in that it would divert or actually reappropriate for a new purpose funds which have been appropriated and allocated and are in the pipeline for purposes specified by the law under the original 1956 act.

I say, Mr. Speaker, I make a point of order against the conference report on this basis.

I would note, Mr. Speaker, that the gentleman from Oklahoma is the one who sustained the point of order raised by Mr. Gross in the case which I have referred to.

Mr. Speaker, I am inclined to anticipate a ruling against my point of order, but if that should be the case, Mr. Speaker, I suggest we are making a mockery of the rules of the House.

Since some of my comrades may not be aware of it, the rules of the House in clause 5, rule XXI, provide:

> No bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations, nor shall an amendment proposing an appropriation be in order during the consideration of a bill or joint resolution reported by a committee not having that jurisdiction. A question of order on an appropriation in any such bill, joint resolution, or amendments thereto may be raised at any time.

Mr. Speaker, that is a rule of the House. Now, since the House in its rules cannot have extraterritorial effect or extra body effect, in order to protect the House from having its rules violated by the Senate, we adopted clause 2 of rule XX which related to action that the Senate might take that would be violative of the House rules. But the very fact that this is not a Senate amendment on a House bill is insignificant if the rules of the House are going to have any real meaning because what we are saying is any time we want to violate the House rules, we can have the rule provide that after consideration of the bill it shall be in order for the such-and-such Senate bill to be taken from the Speaker's desk and everything after the enacting clause stricken and apply the House language, or we can, when the bill is under consideration before the House get consent to strike everything after the enacting clause of the Senate bill and substitute the House language. In either of those cases that for all intents and purposes precludes a Member of this House from saying that the rules of this House are violated with respect to action by the Senate.

I respectfully suggest, Mr. Speaker, at this point in time when we are having some questions raised about the integrity of the House rules and House administration, this is not the time to render a decision on a point of order that gives in effect further credence to the fact that we do not intend to maintain integrity in this House with respect to the rules of the House if the procedure is carried out in a circuitous way.

THE SPEAKER: Does the gentleman from Ohio care to be heard on the point of order?

MR. [THOMAS L.] ASHLEY [of Ohio]: Very briefly, Mr. Speaker.

Mr. Speaker, clause 2 of rule XX of the rules of the House makes out of order any provision in a Senate amendment which provides for an appropriation. However, the rule does not address itself to provisions in Senate bills. The conferees accepted the provision in question, without change, from a Senate bill and not from a Senate amendment. Therefore, no violation of the House rules is involved even if the provision is considered to be an appropriation.

THE SPEAKER: The Chair is ready to rule.

The gentleman from Michigan has made a point of order against the conference report, referring to the language of rule XX, clause 2, which places certain restrictions on the managers on the part of the House in a conference with the Senate.

The Chair has ruled on this matter before.

On January 25, 1972, the Chair ruled in connection with a point of order made by the gentleman from Iowa (Mr. Gross) against the conference report on a foreign military assistance authorization bill (S. 2819) on the ground that the House conferees had exceeded their authority by including in the conference report an appropriation entirely in conflict with clause 2, rule XX. That rule provides, in relevant part, that "no amendment of the Senate"—that is the important language—no amendment of the Senate providing for an appropriation upon any bill other than a general appropriation bill, shall be agreed to by the managers on the part of the House.

The Chair would point out that it was a Senate bill which was sent to conference with a House amendment thereto. The rule is restricted in its application to Senate amendments and, thus, is not applicable in the present situation.

The Chair, therefore, overrules the point of order.

MR. BROWN of Michigan: Mr. Speaker, in view of the ruling of the Chair, I just would like to point out that in the conference report the paragraph appears:

> That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment.

In other words, with a Senate amendment.

Now, I respectfully suggest that for all intents and purposes, by using the circuitous route of taking up the Senate bill and including the House language, we nullify totally the basic directive of the House rules that this House shall not concur in any appropriation in a legislation bill not a gen-

eral appropriations act, and for the Chair to rule that we will accept a circuitous violation of the House rules, that we will not accept a direct violation, I think is not in the best interests of the House.

THE SPEAKER: The Chair just thinks there are other rules that govern and that can protect the House in situations of this type. The gentleman has referred to the language of the conference agreement; and the Chair would point out that the managers have proposed that the Senate recede and concur in the House amendment with an amendment. There is no Senate amendment before the House at this time.

Is there objection to the request of the gentleman from Wisconsin that the statement be read in lieu of the report?

There was no objection.

The Clerk read the statement.

Parliamentarian's Note: The procedural safeguards mentioned by the Speaker against the inclusion of appropriations in Senate bills include: (1) possible points of order under section 401 of the Congressional Budget Act, if the Senate provision can be construed as new spending authority not subject to amounts specified in advance in appropriations acts where budget authority has not been provided in advance (in this case, the money had already been appropriated and was in a revolving fund, so section 401 was not applicable); and (2) returning Senate bills which contain appropriations to the Senate by asserting the constitutional prerogative of the House to originate "revenue" measures (construed under the precedents to include at least "general appropriation bills").

Points of Order Against Consideration of Conference Reports

§ 4.20 A point of order against consideration of a conference report based upon the fact that the managers had affixed their signatures prior to their formal appointment must be made prior to consideration of the conference report in the House.

On Mar. 25, 1980,[5] the chairman of the Committee on Banking and Currency asked that a conference report on S. 662, a bill authorizing funds for International Banks, be recommitted to the conference. A series of inquiries followed which revealed that there had not been a formal, open meeting of the conference as required by Rule XXVIII. The conferees had been meeting informally with their Senate counterparts and had affixed their signatures about 30 minutes before their formal appointment. While this informal

5. 126 CONG. REC. 6429–31, 96th Cong. 2d Sess.

meeting had been in an "open" situation, it could not qualify as an "open meeting" since the managers had not been appointed.

MR. [HENRY S.] REUSS [of Wisconsin]: Mr. Speaker, I ask unanimous consent to recommit the Senate bill, S. 662, to conference.

THE SPEAKER PRO TEMPORE:[6] Is there objection to the request of the gentleman from Wisconsin?

MR. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, reserving the right to object, could the gentleman tell me the title of the bill?

MR. REUSS: Yes; this is the bill containing authorization for the Inter-American Development Bank, the Asian Development Bank, and the African Development Fund.

MR. BAUMAN: Could the gentleman from Wisconsin explain to me why the chairman is asking to recommit this bill?

MR. REUSS: Yes, though not without some embarrassment. Technically, it turned out that the conferees had conferred and done their business a few minutes before the House conferees were, in fact, appointed. That was one of those slips betwixt the cup and the lip which occur because of the length of our corridors. So, the report as it comes back to us is technically imperfect, and it is to correct that imperfection that I ask this unanimous-consent request.

MR. BAUMAN: Further reserving the right to object, I assume what the gentleman is saying is that the consideration of the report in conference did not comply with rule XXVIII, which requires an open conference meeting unless the House votes otherwise?

MR. REUSS: I believe that is the relevant section. In any event, whether it is rule XXVIII or not, and I do not have it in front of me, it obviously was unintentionally improper, and we seek to correct that by doing it right.

MR. BAUMAN: Further reserving the right to object, I would like to make a parliamentary inquiry, Mr. Speaker.

If no Member made a point of order against the consideration of the conference report it could be considered; could it not?

THE SPEAKER PRO TEMPORE: The gentleman is correct.

MR. BAUMAN: Further reserving the right to object, does the gentleman from Wisconsin know of anyone who is going to make a point of order?

MR. REUSS: No, I do not, but I realize that a valid point of order would lie, and I did not want to be in the position of having something on the calendar for tomorrow or the next day, knowing how fragile it is. I cannot speak for 434 other Members.

MR. BAUMAN: Further reserving the right to object, Mr. Speaker, I would like to make a further parliamentary inquiry.

If this request is granted, the House is then asking the other body for a conference. At that point it allows the other body to act first under the rules, and that would preclude a motion to recommit with instructions on the part of any Member of the House. Is that correct?

THE SPEAKER PRO TEMPORE: This request would not change the order of consideration of the new report. It

6. John P. Murtha (Pa.).

merely asks for a recommital of the conference report to the same conference.

MR. BAUMAN: If the motion is granted, is a motion to recommit or a motion to instruct in order at this time?

THE SPEAKER PRO TEMPORE: The House would still act first on the conference report.

MR. BAUMAN: Further reserving the right to object, the gentleman from Maryland, knowing the outcome of the consideration of the conference, would very much like to make a motion to instruct but does not have one prepared at this time.

THE SPEAKER PRO TEMPORE: The Chair advises that would not be in order at this time in any event.

MR. BAUMAN: That was the question the gentleman put to the Chair, whether a motion to instruct would be in order at this time. The Chair says "No." If this request is not granted and a point of order is made against the consideration of the conference report, as the gentleman from Wisconsin suggested, it might be that no motion to instruct would be in order under rule XXVIII at that time, would it?

THE SPEAKER PRO TEMPORE: If a point of order were sustained under clause 6 to rule 28 a new conference would be considered as requested and conferees appointed without intervening motion and the Senate would probably agree to a new conference and would probably act first on the new conference report.

MR. BAUMAN: Further reserving the right to object, I would inquire of the Chair, if in either case a motion to recommit with instructions would be precluded by any Member of the House, whether this request is granted, or whether a point of order is made, and the rule automatically recommits the conference report?

THE SPEAKER PRO TEMPORE: Not in this case, if the request is granted for recommittal to the same conference.

MR. BAUMAN: Well, I would say that the gentleman from Maryland is trying to protect the rights of the minority, or actually the majority who voted on this bill and who might seek a way of vindicating their position in a motion to instruct the conferees, or a motion to recommit.

THE SPEAKER PRO TEMPORE: If this request is granted to recommit the conference report, the motion to recommit would be protected for the minority.

MR. BAUMAN: But if the other body acts, Mr. Speaker, that precludes a motion to recommit with instructions; does it not?

THE SPEAKER PRO TEMPORE: If this goes back to the same conference the other body, of course, does not have to agree to a request for a new conference.

MR. BAUMAN: But the other body can act first, thereby precluding any motion to recommit?

THE SPEAKER PRO TEMPORE: If the papers are traded in conference, that is possible, but not the normal sequence. . . .

MR. BAUMAN: Mr. Speaker, further reserving the right to object, is it within the province of the senior conferee to return the papers to this House for action first, in order to protect a motion to recommit?

MR. REUSS: Mr. Speaker, if the gentleman will yield, that is absolutely right. That would be the normal course.

MR. BAUMAN: Mr. Speaker, further reserving the right to object, do I have the guarantee of the gentleman from Wisconsin that that will be his course of action? . . .

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Procedure for Raising Point of Order Against Nongermane Provision in Conference Report; Timing of Motion To Reject

§ 4.21 Where the Chair sustains a point of order that conferees have agreed to and included in a conference report a nongermane provision, a motion to reject that provision is in order under Rule XXVIII clause 4(b), and is debatable for 40 minutes, equally divided between the Member making the motion and a Member opposed; and if the motion to reject is defeated, the debate commences on the conference report itself.

The text of the conference report on H.R. 6027,[7] the Local Government Antitrust Act of 1984, considered in the House on Oct. 11, 1984,[8] the resulting point of order, and subsequent proceedings are carried below.

Mr. Rodino submitted the following conference report and statement on the bill (H.R. 6027) to clarify the application of the Federal antitrust laws to the official conduct of local governments:

CONFERENCE REPORT (H. REPT. NO. 98–1158)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6027) to clarify the application of the Federal antitrust laws to the official conduct of local governments, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

This Act may be cited as the "Local Government Antitrust Act of 1984.".

SEC. 2. For purposes of this Act—

(1) the term "local government" means—

(A) a city, county, parish, town, township, village, or any other general function governmental unit established by State law, or

(B) a school district, sanitary district, or any other special function governmental unit established by State law in one or more States,

(2) the term "person" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(A)), but does not include any local government as defined in paragraph (1) of this section, and

7. 130 CONG. REC. 31441, 98th Cong. 2d Sess., Oct. 10, 1984.

8. 130 CONG. REC. 32219, 32220, 32223, 32224, 98th Cong. 2d Sess.

(3) the term "State" has the meaning given it in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

SEC. 3. (a) No damages, interest on damages, costs, or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from any local government, or official or employee thereof acting in an official capacity.

(b) Subsection (a) shall not apply to cases commenced before the effective date of this Act unless the defendant establishes and the court determines, in light of all the circumstances, including the stage of litigation and the availability of alternative relief under the Clayton Act, that it would be inequitable not to apply this subsection to a pending case. In consideration of this section, existence of a jury verdict, district court judgment, or any stage of litigation subsequent thereto, shall be deemed to be prima facie evidence that subsection (a) shall not apply.

SEC. 4. (a) No damages, interest on damages, costs or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) in any claim against a person based on any official action directed by a local government, or official or employee thereof acting in an official capacity.

(b) Subsection (a) shall not apply with respect to cases commenced before the effective date of this Act.

SEC. 5. Section 510 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1985 (Public Law 98–411), is repealed.

SEC. 6. This Act shall take effect 30 days before the date of the enactment of this Act.

And the Senate agree to the same.

PETER W. RODINO,
JACK BROOKS,
DON EDWARDS,
JOHN F. SEIBERLING,
BILL HUGHES,
MIKE SYNAR,
GEO. W. CROCKETT, Jr.,
CHARLES SCHUMER,
EDWARD FEIGHAN,
HAMILTON FISH,
CARLOS J. MOORHEAD,
HENRY HYDE,
DANIEL E. LUNGREN,
Managers on the Part of the House.
STROM THURMOND,
ORRIN HATCH,
HOWARD METZENBAUM,
Managers on the Part of the Senate. . . .

MR. [PETER W.] RODINO [Jr., of New Jersey]: Mr. Speaker, pursuant to House Resolution 616, I call up the conference report on the bill (H.R. 6027) to clarify the application of the Clayton Act to the official conduct of local governments, and for other purposes.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE:[9] The Clerk will read the conference report.

The Clerk proceeded to read the conference report. . . .

MR. RODINO (during the reading): Mr. Speaker, I ask unanimous consent that the conference report be considered as read.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from New Jersey?

There was no objection.

POINT OF ORDER

MR. [CHARLES] WILSON [of Texas]: Mr. Speaker, I have a point of order.

I make the point of order that the last section of the conference report contains nongermane matters within the definition of clause 4 of rule XXVIII.

9. Steny H. Hoyer (Md.).

THE SPEAKER PRO TEMPORE: Does the gentleman from New Jersey desire to be heard on the point of order?

MR. RODINO: The gentleman from New Jersey desires to be heard on the point of order.

MR. WILSON: I would also like to be heard, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from Texas.

MR. WILSON: Mr. Speaker, if the objectionable section had been offered to the House bill, it would have been in violation of the provisions of clause 7 of rule XVI of the House rules. The provision is a repeal of appropriations law.

That provision deals with spending levels for the Federal Trade Commission for this fiscal year. The legislation is a permanent piece of legislation that amends our antitrust laws. These amendments reduce monetary damages that local governments may be liable for in antitrust suits.

That has nothing to do with the provision of the last section of this conference report to which my point of order is directed.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from New Jersey [Mr. Rodino].

MR. RODINO: Mr. Speaker, I rise in opposition to the point of order against section 5 of the conference report. The fundamental purpose of this conference report is to provide for continued enforcement of the antitrust laws without severely damaging local governments. This legislation before us continues to ensure that antitrust violations will be prosecuted; but limits the amount of damages which can be assessed in such a case against a local governmental unit. It allows the aggrieved party to ensure that injunctive relief will be available to terminate anticompetitive activity of a local government.

The fundamental purpose of the section against which the gentleman raises a point of order is to permit the Federal Trade Commission to continue to bring antitrust suits against municipalities. The Federal Trade Commission is limited in the remedies that it may pursue: The FTC cannot seek damages, only injunctive relief. That is what this bill is all about, preventing damage suits while leaving injunctive remedies in place.

Mr. Speaker, I believe that the provisions of section 5 are wholly consistent with the fundamental purpose of the rest of the conference report and are therefore germane and the point of order should not be sustained.

THE SPEAKER PRO TEMPORE: Does the gentleman from New York desire to be heard on the point of order?

MR. [HAMILTON] FISH [Jr., of New York]: Yes, I do, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Chair recognizes the gentleman from New York on the point of order.

MR. FISH: Mr. Speaker, H.R. 6027 protects local governments, as well as its officials and employees, against money damages in suits under our antitrust laws.

However, it implicitly continues to allow suits for injunctive relief, when no money damages are involved, to enforce these antitrust laws against possible anticompetitive actions by units of local governments.

These suits for injunctive relief may be brought either by a private party or

by the antitrust enforcement agencies, the Department of Justice, or the FTC.

The so-called taxicab rider which would be repealed by section 5 of this bill currently impedes the ability of the FTC to bring the very type of injunctive relief enforcement which the bill before us envisions and presumes. While removing the threat of money damages, we do not intend that local governments be totally immune from Federal antitrust laws. Suits for injunctive relief will be a safety net against potential anticompetitive activities by localities.

This repeal of section 510 of Public Law 98–411 is fully consistent with the overall purposes of this bill. To remove section 5 from this legislation would, ironically, prevent the FTC enforcement when a locality is involved in anticompetitive conduct.

Again, the FTC would not recover money damages under the structure of H.R. 6027, but it could seek an injunction to bring anticompetitive activities by localities to a halt. The fair balance in this legislation would be distorted if the FTC remains unable to exercise its normal statutory responsibilities to enforce compliance with our antitrust laws.

Section 5 is consistent with the fundamental purposes of this legislation and should remain in this bill. It is germane in a logical, substantive sense. This is an antitrust bill. The FTC is an antitrust enforcement agency. H.R. 6027 is an amendment to the Clayton Act. The FTC, along with the Department of Justice, enforces that very same Clayton Act.

Section 510 of Public Law 98–411 was, in reality, legislation on an appropriation bill, so its repeal is germane, but the fact is that its original enactment was not germane.

THE SPEAKER PRO TEMPORE: Does the gentleman from Texas [Mr. Wilson] wish to be heard further on his point of order?

MR. WILSON: No, Mr. Speaker.

THE SPEAKER PRO TEMPORE: If not, the Chair has had the opportunity of reviewing the point of order raised by the gentleman from Texas that pursuant to clause 4 of rule XXVIII, the conferees on H.R. 6027 have agreed to a nongermane Senate provision. Section 5 of the conference report on H.R. 6027 contains the substance of section 3 of the Senate amendment, which repealed section 510 of Public Law 98–411, the State, Justice, Commerce Appropriation Act for fiscal year 1985. The section proposed to be repealed prohibits the expenditure of funds in that appropriation act for the Federal Trade Commission to conduct antitrust actions against municipalities or other units of local government.

H.R. 6027 as passed by the House only addresses the issue of antitrust remedies for claims against local governments, and merely limits monetary relief for a Federal or private cause of action against a local government under the Clayton Act. While the House bill may limit the remedies which the FTC may obtain in such suits, in the same way it limits any claimant, the House bill does not address the general authority of the FTC to prosecute antitrust actions, or the conditions under which the FTC may use its appropriated funds for the coming fiscal year. The Chair would also point out that the conference report

and Senate amendment directly amend a general appropriation act not addressed in the House bill.

For the reasons stated, the Chair sustains the point of order.

Does the gentleman from Texas have a motion pursuant to clause 4 of rule XXVIII?

MOTION OFFERED BY MR. WILSON

MR. WILSON: Mr. Speaker, I move, pursuant to clause 4(b) of rule XXVIII, to strike section 5 of the conference report.

THE SPEAKER PRO TEMPORE: The gentleman from Texas [Mr. Wilson] is entitled to 20 minutes in support of his motion.

Does the gentleman from Texas wish to use his time?

MR. WILSON: Mr. Speaker, I am prepared to yield back my time.

THE SPEAKER PRO TEMPORE: The gentleman from New Jersey [Mr. Rodino] is entitled to 20 minutes in opposition to the motion. . . .

The question is on the motion offered by the gentleman from Texas [Mr. Wilson].

The question was taken; and on a division (demanded by Mr. Wilson) there were—yeas 8, nays 23.

MR. PHILIP M. CRANE [of Illinois]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 36, nays 298, not voting 98. . . .

So the motion was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

THE SPEAKER PRO TEMPORE:[10] The gentleman from New Jersey [Mr. Rodino] will be recognized for 30 minutes, and the gentleman from New York [Mr. Fish] will be recognized for 30 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. Rodino].

Order of Responding to Points of Order

§ 4.22 Where a conference report is vulnerable to several points of order that sections included therein are not germane, the Speaker entertains one point of order at a time, rules on whether it is germane, and if he sustains the point of order entertains a motion to reject that provision. After a vote on one motion to reject, he then entertains the next point of order under Rule XXVIII clause 4. If any motion to reject is agreed to, the conference report falls, and a motion to recede and concur in the Senate amendment, with an amendment eliminating the rejected provisions, is entertained.

10. Frank Harrison (Pa.).

The proceedings of Oct. 15, 1986,[11] when the House had before it the conference report on the Commodity Futures Trading Act of 1986, provide a good illustration of the steps required by Rule XXVIII clause 4.

CONFERENCE REPORT ON H.R. 4613, FUTURES TRADING ACT OF 1986

Mr. de la Garza submitted the following conference report and statement on the bill (H.R. 4613) to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that Act:[12]

CONFERENCE REPORT (H. REPT. 99–995)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4613) to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that Act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

section 1. short title and table of contents.

(a) SHORT TITLE.—This Act may be cited as the "Futures Trading Act of 1986".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.

TITLE I—FUTURES TRADING

sec. 101. fraudulent practices.

Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—. . .

MR. [E (KIKA)] DE LA GARZA [of Texas]: Mr. Speaker, pursuant to the provisions of House Resolution 590, the rule just adopted, I call up the conference report on the bill (H.R. 4613) to reauthorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements to that act.

The Clerk read the title of the bill.

POINT OF ORDER

MR. [CHARLES O.] WHITLEY [of North Carolina]: Mr. Speaker, I make a point of order against the nongermane amendment contained in the conference report relating to the transfer of national forest lands in the State of Nebraska.

THE SPEAKER:[13] The gentleman from North Carolina (Mr. Whitley) will identify that portion of the bill.

MR. WHITLEY: Mr. Speaker, the point of order is specifically made against section 207 of title II of the conference report.

THE SPEAKER: Does the gentleman from Texas desire to be heard on the point of order?

MR. DE LA GARZA: Yes, Mr. Speaker, briefly.

Mr. Speaker, the committee and the conference committee agreed on the

11. 132 CONG. REC. 31498, 31499, 31502–06, 99th Cong. 2d Sess.

12. See 132 CONG. REC. 30824–26, 99th Cong. 2d Sess., Oct. 14, 1986.

13. Thomas P. O'Neill, Jr. (Mass.).

text of the legislation which is the Commodity Futures Trade Commission.

The other body then added various and sundry other bills and we have to concede the point that they were not germane and they were extraneous to the matter. Therefore, I find myself in the situation where I could not but otherwise yield to the point of order, Mr. Speaker.

THE SPEAKER: The point of order is conceded and sustained.

Does the gentleman from North Carolina (Mr. Whitley) move to reject that part of the conference committee report?

MR. WHITLEY: Mr. Speaker, I do.

MOTION OFFERED BY MR. WHITLEY

MR. WHITLEY: Mr. Speaker, I move to delete section 207 from the conference report.

THE SPEAKER: The gentleman from North Carolina (Mr. Whitley) is recognized for 20 minutes.

MR. WHITLEY: Mr. Speaker, section 207 of title II of the conference report authorizes the conveyance of approximately 173 acres of land in the Nebraska National Forest to the Nebraska Game and Parks Commission, to be added to the Chadron State Park in Nebraska. . . .

THE SPEAKER: The question is on the motion offered by the gentleman from North Carolina (Mr. Whitley).

The motion was agreed to.

POINT OF ORDER

MR. [EDWARD R.] MADIGAN [of Illinois]: Mr. Speaker, I make a point of order against the conference report to H.R. 4613 under rule XXVIII, clause 4, of the House rules for the reason that it contains a Senate amendment that is in violation of rule XVI, clause 7, because it contains matter nongermane to H.R. 4613 as passed by the House.

H.R. 4613, as reported by the Committee on Agriculture, and adopted in the House, was a bill "to authorize appropriations to carry out the Commodity Exchange Act, and to make technical improvements in that act." . . .

THE SPEAKER PRO TEMPORE:[14] Does the gentleman from Texas (Mr. de la Garza) desire to be heard on this point of order?

MR. DE LA GARZA: Yes, Mr. Speaker.

Mr. Speaker, the House version of the CFTC, as I have explained previously, did not contain this item of legislation. The other body amended the bill and added other items. . . .

THE SPEAKER PRO TEMPORE: . . . In the opinion of the Chair, section 202 of the conference report as added in the Senate would not have been germane to the House-passed bill; so the point of order is sustained.

MOTION OFFERED BY MR. MADIGAN

MR. MADIGAN: Mr. Speaker, I move to reject the matter in the conference report originally contained in section 504 of the Senate amendment to H.R. 4613 and now contained in section 202 of the conference report entitled "Basis for Computation of Emergency Compensation Under the 1986 Wheat Program" (H. Rept. 99–995).

THE SPEAKER PRO TEMPORE: The gentleman from Illinois (Mr. Madigan) is recognized for 20 minutes. . . .

14. John Joseph Moakley (Mass.).

MR. MADIGAN: Mr. Speaker, is it correct that I am entitled to close the debate?

THE SPEAKER PRO TEMPORE: The gentleman is not correct. The gentleman from Texas (Mr. Stenholm) has the right to close debate.

MR. MADIGAN: Mr. Speaker, I ask unanimous consent to insert in the Record a letter from the Director of the Congressional Budget Office relative to the item of discussion before the House this morning.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Illinois?

There was no objection.

The text of the letter is as follows: . . .

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from Illinois (Mr. Madigan).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

MR. MADIGAN: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 162, nays 239, not voting 31, as follows: . . .

[So the motion to reject was not agreed to.]

THE SPEAKER PRO TEMPORE: Are there any other points of order against this bill?

VACATING PROCEEDINGS BY WHICH SECTION 207 OF THE CONFERENCE REPORT ON H.R. 4613 WAS DELETED

MRS. [VIRGINIA] SMITH of Nebraska: Mr. Speaker, I ask unanimous consent to set aside and vacate the proceedings on the motion of the gentleman from North Carolina (Mr. Whitley) to reject the Senate amendment to section 406 of H.R. 4613 that is now section 207 of the conference report.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentlewoman from Nebraska?

MR. WHITLEY: Mr. Speaker, reserving the right to object, I want to advise the Members that earlier in the proceedings today I made a point of order against one of the sections of the bill. I do not have the language in front of me at this moment. My point of order was sustained, and I moved that that section of the bill be stricken. Speaker O'Neill was in the chair at the time. He ruled that the motion had carried and announced that the section was stricken.

Subsequent to that time, the gentlewoman from Nebraska approached me and told me that the proceedings were somewhat hasty, that she was taken by surprise and did not have an opportunity to present arguments in opposition to my motion.

Mr. Speaker, I will not object to the gentlewoman's request with the clear understanding that I will have the same time to argue in support of my motion that I was originally assigned if the proceeding is vacated.

THE SPEAKER PRO TEMPORE: If there is no objection and the proceeding is vacated, the Chair will resume as if nothing had happened so that the gentleman from North Carolina (Mr. Whitley) will be protected and will have his time.

MR. WHITLEY: I thank the Chair.

Mr. Speaker, I withdraw my reservation of objection.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentlewoman from Nebraska?

There was no objection.

THE SPEAKER PRO TEMPORE: The gentleman from North Carolina (Mr. Whitley) is recognized for 20 minutes. . . .

THE SPEAKER PRO TEMPORE: The question is on the motion offered by the gentleman from North Carolina (Mr. Whitley).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

0MRS. SMITH of Nebraska: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 274, nays 130 . . . .

[The motion to reject was agreed to.]

THE SPEAKER PRO TEMPORE:[15] Pursuant to clause 4, rule XXVIII, the conference report is considered as rejected.

The question is on the motion to recede and concur in the Senate amendment with an amendment consisting of the text of the conference report without section 207. . . .

MOTION OFFERED BY MR. DE LA GARZA

MR. DE LA GARZA: Mr. Speaker, I offer a motion.

THE SPEAKER PRO TEMPORE: The Clerk will report the motion.

The Clerk read as follows:

> Mr. de la Garza moves that the House recede from its disagreement to the Senate amendment to H.R. 4613 and concur therein with an amendment:

In lieu of the matter inserted by the Senate amendment, insert the text of the conference report on H.R. 4613 without section 207 thereof.

THE SPEAKER PRO TEMPORE: The gentleman from Texas (Mr. de la Garza) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. Madigan) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Texas (Mr. de la Garza).

Points of Order at Conference Stage

§ 4.23 A point of order against a conference report on a legislative bill on the basis that it carries in its text an appropriation is not valid if the appropriation was in the bill as it passed the House and allowed to remain because of waiver or inaction.

On May 1, 1975,[16] during consideration of the conference report on the bill H.R. 6096, the Vietnam Humanitarian and Evacuation Assistance Act of 1975, a point of order was raised against the report on the ground that it carried an appropriation in violation both of clause 2 of Rule XX and clause

15. Kenneth J. Gray (Ill.).

16. 121 CONG. REC. 12752, 12753, 94th Cong. 1st Sess.

5 of Rule XXI. After debate, the Speaker overruled the point of order. The discussion on the point of order and the ruling follow:

MR. [THOMAS E.] MORGAN [of Pennsylvania]: Mr. Speaker, I call up the conference report on the bill (H.R. 6096) to authorize funds for humanitarian assistance and evacuation programs in Vietnam and to clarify restrictions on the availability of funds for the use of U.S. Armed Forces in Indochina, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER:[17] there objection to the request of the gentleman from Pennsylvania?

MS. [ELIZABETH] HOLTZMAN [of New York]: Mr. Speaker, I would like to make a point of order against the conference report.

THE SPEAKER: The gentlewoman will state it.

MS. HOLTZMAN: Mr. Speaker, section 7 of the conference report in the last sentence refers to evacuation programs authorized by this act. It permits a waiver of a series of laws for the purpose of allowing those evacuation programs to take place.

In the House bill (H.R. 6096), section 3 dealt with evacuation programs referred to in section 2 of the bill and waived the same series of laws with respect thereto. In order for section 3 to be considered, it required a rule from the Rules Committee. And a rule was granted waiving points of order against section 3 of the bill. But section 7 of the conference report, in speaking of evacuation programs authorized by the entire act and not just by one section, exceeds the scope of section 3 of the bill and exceeds the waiver that was permitted under the rule. It therefore violates rule XXI, clause 5, and violates rule XX, clause 2, which prohibits House conferees from accepting a Senate amendment providing for an appropriation on a nonappropriation bill in excess of the rules of the House.

Mr. Speaker, last week the Committee of the Whole deliberated on an amendment that exceeded the limitations of the rule granted by the Rules Committee. That was the Eckhardt amendment, and it was ruled out of order by the Chairman. The language in section 7 of the conference report in essence has the same flaw as the Eckhardt amendment.

The last sentence of section 7 of the conference report would waive various provisions of law with respect to $327 million, whereas the last sentence of section 3 of the House bill waived these laws only with respect to $150 million. Section 7 of the conference report, therefore, is broader than section 3 of the House bill.

Had the language of section 7 been offered as an amendment to the House bill, it would have been subject to a point of order. Since the authority of the House conferees is no broader than the waiver originally granted to the bill by the Rules Committee, section 7 of the conference report should be ruled out of order.

THE SPEAKER: Does the gentleman from Pennsylvania desire to be heard on the point of order?

MR. MORGAN: Yes, Mr. Speaker.

17. Carl Albert (Okla.).

The point of order has no standing. Section 3 of the House bill and section 7 of the conference report referred to use of funds of the Armed Forces of the United States for the protection and evacuation of certain persons from South Vietnam. The language of the conference report does not increase funds available for that purpose. Both the House bill and the conference report simply removed limitations on the use of funds from the DOD budget. These limitations were not applicable to the funds authorized in H.R. 6096. The scope of the waiver is the same in the conference report and the House bill.

Mr. Speaker, the changes in language are merely conforming changes. Section 2 of the House bill was a section which authorized the evacuation programs in the House bill. The conference version contains the evacuation programs authority in several sections plus reference to the entire act rather than to one specific section.

Mr. Speaker, the point of order has no standing and I hope it is overruled.

THE SPEAKER: Does the gentlewoman from New York desire to be heard further on the point of order?

MS. HOLTZMAN: No, Mr. Speaker.

THE SPEAKER: The Chair is ready to rule.

The gentlewoman from New York makes the point of order that section 7 of the conference report constitutes an appropriation on a legislative bill in violation of clause 5, rule XXI, to which the House conferees were not authorized to agree pursuant to clause 2, rule XX.

The Chair would first point out that the provisions of clause 2, rule XX, preclude House conferees from agreeing to a Senate amendment containing an appropriation on a legislative bill, and do not restrict their authority to consider an appropriation which might have been contained in the House-passed version. In this instance, the conferees have recommended language which is virtually identical to section 3 of the House bill, and they have not agreed to a Senate amendment containing an appropriation. Therefore, clause 2, rule XX, is not applicable to the present conference report.

While clause 5, rule XXI, permits a point of order to be raised against an appropriation in a legislative bill "at any time" consistent with the orderly consideration of the bill to which applied—Cannon's VII, sections 2138–39—the Chair must point out that H.R. 6096 was considered in the House under the terms of House Resolution 409 which waived points of order against section 3 of the House bill as constituting an appropriation of available funds for a new purpose.

The Chair feels that an analogous situation may be found in Deschler's Procedure, chapter 25, section 23.11. There, points of order had been waived against portions of a general appropriation bill which were unauthorized by law, and the bill passed the House containing those provisions and was sent to conference; the conferees were permitted to report their agreement as to those provisions, since the waiver carried over to the consideration of the same provision when the conference report was before the House.

The gentlewoman from New York also has in effect made the point of order that section 7 of the conference report goes beyond the issues in dif-

ference between the two Houses committed to conference in violation of clause 3, rule XXVIII.

In the House-passed bill, section 3 contained waivers of certain provisions of law in order to make available funds already appropriated to the Department of Defense to be used for the Armed Forces in "evacuation programs referred to in section 2 of the act." The conferees have recommended that the same waivers of law shall apply to "evacuation programs authorized by this act."

In the opinion of the Chair, a conforming change in phraseology in a conference report from language contained in the House or Senate version to achieve consistency in the language thereof, absent proof that the effect of that change is to broaden the scope of the language beyond that contained in either version, does not necessarily render the conference report subject to a point of order. In this instance, it appears to the Chair that the only effect of the language in the conference report was to accomplish the same result that would have been reached by section 3 of the House bill, namely to remove certain limitations on the use of funds in the Defense budget for military evacuation programs under this bill.

The Chair therefore holds that the conferees have not exceeded their authority and overrules the point of order.

Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the statement.

(For conference report and statement see proceedings of the House of April 28, 1975.)

Gaining Floor for Point of Order

§ 4.24 The Chair must recognize a Member to state a point of order relative to the conduct of debate at any time, and it is not necessary that the Member having the floor yield for that purpose.

As the 2d session of the 95th Congress was drawing to a close, the Endangered Species Act Amendments of 1978 was being considered for amendment under the five-minute rule. Time for debate on the bill and remaining amendments was limited to 40 minutes. An amendment was offered by Mr. Duncan and he and Mr. Dingell, the bill manager, were each recognized briefly to debate the amendment. The proceedings of Oct. 14, 1978,[18] were as indicated below:

MR. [ROBERT L.] LEGGETT [of California]: Mr. Chairman, I move to strike the last word.

Mr. Chairman, it is my understanding that we have been considering this bill now for 4 hours. It is everybody's knowledge that we have to complete this bill before the session ends. We do not want to take all day on it.

Mr. Chairman, I ask unanimous consent that debate on all amendments and on the bill close in 30 minutes.

18. 124 CONG. REC. 38153–55, 95th Cong. 2d Sess.

THE CHAIRMAN:[19] Is there objection to the request of the gentleman from California? . . .

MR. LEGGETT: Mr. Chairman, I ask unanimous consent that debate on all amendments and on the bill close in 40 minutes.

THE CHAIRMAN: Is there objection to the request of the gentleman from California?

There was no objection.

MR. [JOHN] BUCHANAN [of Alabama]: Mr. Chairman, reserving the right to object, those of us who have amendments printed in the Record would, of course, be protected by the rules under the scenario?

THE CHAIRMAN: Let the Chair state that that is correct, 5 minutes on each side.

MR. BUCHANAN: I thank the Chair.

THE CHAIRMAN: Is there objection to the request of the gentleman from California?

There was no objection.

THE CHAIRMAN: Members standing at the time the unanimous-consent agreement was entered into will be recognized for 2½ minutes each.

The Chair recognizes the gentleman from New Jersey (Mr. Hughes). . . .

MR. [ROBERT] DUNCAN of Oregon: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Duncan of Oregon: Page 24, strike out line 1 and all that follows down through line 4, and insert in lieu thereof the following:
>
> "(13) The term 'species' means a group of fish, wildlife, or plants, consisting of physically similar organisms capable of interbreeding but generally incapable of producing fertile offspring through breeding with organisms outside this group.";

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Chairman, I reserve points of order against the amendment.

THE CHAIRMAN: The gentleman from Michigan (Mr. Dingell) reserves points of order against the amendment.

MR. DUNCAN of Oregon: Mr. Chairman, without repeating the significance of these amendments that I have already discussed in connection with the first amendment to redefine "critical habitat," this one goes to the definition of "species." The committee bill, at the top of page 24, defines the term "species" as including any subspecies of fish or wildlife or plants, and any distinct segment of the population of any species of vertebrate fish or wildlife which interbreeds when mature. . . .

THE CHAIRMAN: Does the gentleman from Michigan desire to insist upon his point of order?

MR. DINGELL: No, I do not, I wish to speak in opposition to the amendment.

THE CHAIRMAN: The gentleman from Michigan withdraws his point of order and is recognized for 2½ minutes. . . .

MR. DUNCAN of Oregon: Mr. Chairman, will the gentleman yield?

MR. DINGELL: I do not yield.

MR. DUNCAN: of Oregon: Mr. Chairman, I rise to a point of order.

MR. DINGELL: Mr. Chairman, I ask for regular order.

MR. DUNCAN: of Oregon: Mr. Chairman, a point of order.

MR. DINGELL: Mr. Chairman, I ask for regular order. I do not yield to the gentleman. He understands the rules.

MR. DUNCAN: of Oregon: Mr. Chairman, may I state a point of order.

19. B. F. Sisk (Calif.).

THE CHAIRMAN: The gentleman will state his point of order.

MR. DUNCAN: of Oregon: Mr. Chairman, the point of order is——

MR. DINGELL: Mr. Chairman, I do not yield for a point of order.

THE CHAIRMAN: The Chair has stated that the gentleman will state his point of order.

MR. DUNCAN: of Oregon: Mr. Chairman, I have a point of order. The gentleman is addressing himself and his argument to the amendment——

MR. DINGELL: Mr. Chairman, I do not yield to the gentleman from Oregon.

Mr. Chairman, I demand the protection of the Chair. This is a frivolous point of order. I do not yield for that purpose. I ask that the gentleman be instructed to take his seat and behave himself.

THE CHAIRMAN: Will the gentleman from Michigan (Mr. Dingell) please recognize that the Chair is trying to conform to the rules.

The gentleman has made a point of order; and of course, the Chair must recognize that point of order.

MR. DINGELL: Mr. Chairman, I do not yield for the point of order.

THE CHAIRMAN: The Chair will state that it is not necessary that the gentleman yield for that purpose. The Chair has a right at any time to recognize a Member on a point of order.

The gentleman from Michigan will continue to proceed in order.

MR. DINGELL: I am proceeding in order, Mr. Chairman.

THE CHAIRMAN: The gentleman will proceed. . . .

MR. [WILLIAM J.] HUGHES [of New Jersey]: Mr. Chairman, I yield 1 minute to the gentleman from Oregon (Mr. Duncan).

THE CHAIRMAN: The Chair will advise the gentleman that he already used his time under the allocation.

MR. HUGHES: Mr. Chairman, I had two amendments at the desk.

THE CHAIRMAN: The gentleman has used his time.

The Chair was trying to be fair in recognizing either the chairman or the ranking member, if either desires to comment on the amendment.

Point of Order Against Motion To Recommit

§ 4.25 A point of order against a motion to recommit must be made immediately after the motion is read and comes too late after debate thereon.

On May 13, 1982,[20] Mr. Dan Glickman, of Kansas, attempted to raise a point of order against a pending motion to recommit. The gist of the argument he attempted to make was that the motion amended an amendment already adopted by the House. The motion in this instance was not protected by language in the special order providing for consideration of the bill and specifying that the motion to recommit could be "with or without instructions." In any event, the point of order against the motion came too late, the pro-

20. 128 CONG. REC. 9838, 97th Cong. 2d Sess.

ponent having entered into the five-minute debate permitted by the rules.

THE SPEAKER PRO TEMPORE:[1] Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

THE SPEAKER PRO TEMPORE: The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. DUNN

MR. [JIM] DUNN [of Michigan]: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER PRO TEMPORE: Is the gentleman opposed to the bill?

MR. DUNN: I am, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman qualifies.

The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. Dunn moves to recommit the bill H.R. 5890 to the Committee on Science and Technology with instructions to report back the same forthwith with the following amendment: On page 2, line 22, strike "$267,100,000" and insert in lieu thereof "$232,700,000".

MR. DUNN: Mr. Speaker, the point of this is to say to this body, and even though I am a member of the committee and a strong supporter of our space program in its entirety, that if we cannot in a $6.6 billion budget deal with between us reducing $35 million, then I would have to ask the Members of this body, where are we going to begin to cut?

The proposal that came from the administration represented an 11-percent increase—an 11-percent increase for NASA at a time when many other areas of our Government are being asked to cut back. If we cannot between us find $35 million, then—

PARLIAMENTARY INQUIRY

MR. GLICKMAN: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: Does the gentleman yield for the inquiry?

MR. DUNN: I yield just for an inquiry. The gentleman will state his parliamentary inquiry.

MR. GLICKMAN: Mr. Speaker, I would ask if the numbers in the motion to recommit are in fact the same numbers in the committee bill as amended by the Winn amendment?

MR. DUNN: Yes, Mr. Speaker. They are the same numbers as in the Winn amendment.

THE SPEAKER PRO TEMPORE: The Chair will inquire, is the gentleman from Kansas (Mr. Glickman) raising a point of order?

MR. GLICKMAN: Yes, Mr. Speaker, I am raising a point of order.

MR. DUNN: Regular order, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The Chair will state that, the gentleman's point of order is not timely. It comes too late.

The gentleman from Michigan (Mr. Dunn) will proceed.

1. Gillis W. Long (La.).